United States Court of Appeals

for the Second Circuit

APPENDIX

76-7563

United States Court of Appeals

FOR THE SECOND CIRCUIT

DAVID COHN,

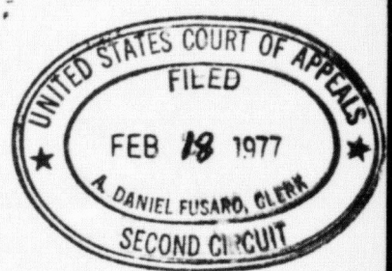
Plaintiff-Appellant,

against

COLECO INDUSTRIES, INC.,

Defendant-Appellee.

APPEAL FROM AN ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK



APPENDIX TO THE BRIEFS

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Dated: February 10, 1977
At: New York, New York

PAGINATION AS IN ORIGINAL COPY

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APPENDIX TO THE BRIEFS

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PLAINTIFFS

COHN, DAVID

DEFENDANTS

KNAPP, J.

COLECO INDUSTRIES, INC,
a Connecticut corporation

11/9

CAUSE

Action for Patent Infringement

mm

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UNITED STATES COURT OF APPEALS
FILED
DEC 8 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

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UNITED STATES DISTRICT COURT

DAVID COHN VS COLECO IND. INC. etc. KNAPP, J. 75 Civ 2077

DATE	NR.	PROCEEDINGS
05-01-75	(1)	Filed complaint and issued summons.
05-16-75	(2)	Filed summons & entered marshal's return served on: Cleco Industries, Inc. by Myra Sussman 5-7-75.
05-23-75	(3)	Filed Notice of appearance of attys for Deft.
05-23-75	(4)	Filed ANSWER AND COUNTERCLAIM OF DEFT.
6-06-75	(5)	Filed pltff.'s reply to counterclaim of deft. FLH&P K&KRC&C
1-11-75	(6)	Filed pltff's first set of interrogs to deft.
11-11-75	(7)	Filed pltff's attys notice of appearance.
4-09-76	(8)	Filed deft's answers to pltff's first set of interrogs.
4-05-76	(9)	Filed deft's request for admissions.
4-07-76	(10)	Filed deft's interrogs to pltff.
5-17-76	(11)	Filed deft's affidavit & notice of motion for summary judgment of Non-Infringement ret.5-27-76.
5-17-76	(12)	Filed deft's memorandum in support of motion for summary judgment.
5-17-76	(13)	Filed affidavit of D.M.Wetstone Re: structure & operation of the Bo A-Matic.
5-19-76	(14)	Filed deft's 9(g) statement .
5-28-76	(15)	Filed stip & order that extending for two weeks the time of pltff. to respond to deft's motion for summary judgment & deft. to bring on motion for hearing on the 11th day of June,1976. Knapp,J.
5-26-76	(16)	Filed pltff's answers to deft's interrogs.
5-26-76	(17)	Filed pltff's response to request for admissions.
6-10-76	(18)	Filed affidavit of W.R.Slinger Re: Coleco Bowl-A_Matic 300 games.
6-10-76	(19)	Filed pltff's memorandum in opposition to deft's motion for summary
6-10-76	(20)	Filed pltff's statement of facts pursuant to rule 9(g).
6-28-76	(21)	Filed deposition of Richard Freeman taken on 5-24-76. m/n .
8-06-76	(22)	Filed Opinion # 44939...Accordingly, Deft. is entitled to summary judgement. Deft has asked for attys' fees on the ground that pltff's case is utterly frivolous. Although we have found that deft. is clearly entitled to summary judgement, we do not find this case to be so exceptionally unfounded asto necessitate an award of attys' fees, and we deny the defts'. request. Submit judgement on five (5) days notice. So Ordered. m/n Knapp J.
10-12-76	23	Filed Judgement that the action be dismissed on the merits, defts' request for attorney's fees be denied, and that deft recover its costs. Knapp J. Judgment entered 10-12-76 Clerk m/n
11-09-76	24	Filed Pltff's notice of appeal from summary judgment of 10/12/76. (mailed copy to Forsythe,Leviness&Pearson-Attn:Kenneth Pearson on 11/10/76)

BEST COPY AVAILABLE

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID COHN,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO.
COLECO INDUSTRIES, INC., a Connecticut corporation,	:	
Defendant.	:	

C O M P L A I N T

This is a civil action for Patent Infringement arising under the Patent Laws of the United States, 35 U.S.C. 271, 281 and 283. The jurisdiction of this Court and the venue are founded on the provisions of Title 28 U.S.C., Sections 1332, 1338 and 1400(b).

1. The plaintiff, DAVID COHN, is a resident of the City and State of New York.

2. The defendant, COLECO INDUSTRIES, INC., is a corporation organized and existing under the laws of the State of Connecticut and has a regular and established place of business within this District at 200 Fifth Avenue, New York, New York.

3. Plaintiff, DAVID COHN, is the owner of the entire right, title and interest in and to U.S. Letters Patent No. 3,019,020, issued January 30, 1962 for a "Bowling Game".

4. U.S. Letters Patent No. 3,019,020 discloses a unique and novel "Bowling Game" and the defendant having actual notice of said Letters Patent and well knowing of the rights of plaintiff in and to said Letters Patent, has been and is infringing thereon by selling and offering for sale "Bowling Games" as described and claimed in said Letters Patent within this district, as well as elsewhere.

5. Upon information and belief, defendant will continue to infringe upon the aforesaid Letters Patent to the irreparable damage to plaintiff unless enjoined by the Court and plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff demands:

a) That defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them be enjoined from infringing upon U.S. Letters Patent No. 3,019,020.

b) That defendant be required to account to plaintiff for all profits realized by defendant and damages suffered by plaintiff resulting from the infringement and that damages be trebled.

c) That plaintiff be granted such other and further relief as the equity of the case may require and as to this Court may seem just and proper, together with costs and disbursements of this action including attorney's fees.

John A. Reilly

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Attorney for Plaintiff
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Of Counsel:

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(212) 425-7200

MAY 24 5 26 AM '75

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff	)	CIVIL ACTION
v.	)	No. 75 Civ 2077
COLECO INDUSTRIES, INC., Defendant	)	Judge Knapp

ANSWER AND COUNTERCLAIM

Defendant COLECO INDUSTRIES, INC., for its answer to the complaint herein, avers as follows with respect to the correspondingly identified paragraphs of the complaint:

Introductory Paragraph. Defendant admits that this is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. 271. Defendant further admits that jurisdiction and venue are founded on the provisions of Title 28, U.S.C., Sections 1338 and 1400(b). Defendant denies that the action arises under Title 35 U.S.C. 281 and 283 or that jurisdiction and venue are appropriate under Title 28 U.S.C. 1332. Defendant further denies that it has committed any acts of infringement.

1. Based upon information and belief, Defendant admits the allegations of Paragraph 1.

2. Defendant admits the allegations of Paragraph 2.

3. Defendant admits that United States Letters Patent No. 3,019,020 was granted on January 30, 1962 to David Conn of 123 Coleridge Street, Brooklyn, New York for "A Bowling Game". It denies that said Letters Patent was duly issued; it is without information sufficient to form a belief as to the ownership of said Letters Patent and therefore leaves Plaintiff to its proofs.

4. Defendant admits that United States Letters Patent No. 3,019,020 is directed to a bowling game; that it had received a communication from an attorney indicating that he represented the patentee and offering a license to the patent. Defendant further admits that it has been selling a bowling game. Defendant denies that it has infringed said Letters Patent and each and every other allegation of Paragraph 4 except as specifically admitted herein.

5. Defendant denies each and every allegation of the paragraph.

COUNTERCLAIM

For a counterclaim herein, Defendant alleges as follows:

1. Defendant COLECO INDUSTRIES, INC. is a corporation organized and existing under the laws of the State of Connecticut and having a place of business at 200 Fifth Avenue, New York, New York.

2. Upon information and belief, Plaintiff DAVID COHN is a resident of the City and State of New York.

3. This is an action for declaratory judgment brought under United States Code Title 28, Section 2201, and jurisdiction and venue are predicated upon United States Code Title 28, Section 1338(a), and the patent laws of the United States, United States Code Title 35.

4. Defendant manufactures and sells bowling games within this district and throughout the United States and is recognized as a major manufacturer of such bowling games.

5. Upon information and belief, Plaintiff is the owner of the entire right, title and interest in and to United States Letters Patent 3,019,020 issued January 30, 1962.

6. Plaintiff has charged Defendant with infringement of United States Letters Patent No. 3,019,020 as evidenced by the complaint in the present action whereby there exists an actual controversy between the parties as to validity and infringement of United States Letters Patent No. 3,019,020. Plaintiff's conduct is causing Defendant expense and interfering with its manufacturing and marketing activities, all to Defendant's damage.

7. The aforesaid United States Letters Patent No. 3,019,020 is invalid and void because the inventor named therein was not the original and first inventor of the alleged invention described and claimed therein, but the same invention disclosed and claimed, in all of its material and substantial parts, was known and used by others in this country before his alleged invention or discovery thereof, was patented and described in printed publications in this

or foreign countries before the alleged invention or discovery thereof, or more than one year prior to the filing date of the application which matured into the into the aforesaid United States Letters Patent, was in public use or on sale in this country before the alleged invention thereof or more than one year prior to the effective date of application for the aforesaid Letters Patent, was described in patents granted on applications for patent by others filed in the United States before his alleged invention or discovery thereof and because, before his alleged invention or discovery thereof, the same was made in this country by others who had not abandoned, suppressed or concealed it.

8. The aforesaid Letters Patent and each of the claims thereof is invalid and void because the difference, if any, between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains as barred by Section 103 of United States Code Title 35.

9. The aforesaid Letters Patent and each of the claims thereof is invalid and void and not infringed because the claims do not particularly point out and distinctly claim the alleged invention described or shown, but rather are broader than and/or different from the alleged invention, or vague and indefinite, and are functional in respect of alleged features of novelty, and the aforesaid patent, and each of the claims thereof, is invalid and void because the alleged invention of the claims was first presented to the Patent Office more than one year after the alleged invention had been published, patented or in public use in the United States.

10. The aforesaid Letters Patent and each of the claims thereof is invalid and void because the alleged invention involves nothing more than an aggregation of old elements without change in the functions thereof.

11. The structures made by Defendant are not within the valid scope and do not infringe the aforesaid Letters Patent.

12. Plaintiff is estopped from asserting that Defendant's bowling games infringe the aforesaid United States Letters Patent because of acquiescence in certain actions of the Patent Office during the prosecution of the application which matured into the aforesaid Letters Patent and because the arguments and representations made by and on behalf of the alleged inventor in connection with the prosecution of said patent application in order to obtain the issuance of the aforesaid Letters Patent place Defendant's bowling games outside the scope of the aforesaid patent.

WHEREFORE, Defendant COLECO INDUSTRIES, INC. prays for judgment:

1. that the complaint herein be dismissed;

2. that each and all of the claims of Cohn Patent 3,019,020 be declared invalid and void and not infringed by Defendant or any of its customers, representatives, agents and users of Defendant's bowling games;

3. That Plaintiff, his agents and employees, be enjoined from enforcing or attempting to enforce said United States Letters Patent 3,019,020 against Defendant, its customers, representatives, dealers and ultimate users of its bowling games;

4. that Plaintiff be assessed costs and attorneys' fees for filing of the present action without justification therefor;

5. that Defendant be granted such other and further relief as is just.

COLECO INDUSTRIES, INC.

By _____

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Of Counsel:

Peter L. Costas
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203-527-5267

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer and Counterclaim was served by first class mail, postage prepaid, upon John A. Reilly, Esq., Kenyon & Kenyon Reilly Carr & Chapin, 59 Maiden Lane, New York, New York 10038 this 23rd day of May, 1975.

Kenneth Pearson
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212-759-4300

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION No. 75 Civ 2077 Judge Knapp
COLECO INDUSTRIES, INC.,	:	
Defendant.	:	

REPLY TO COUNTERCLAIM

Plaintiff, DAVID COHN, for its reply to the counterclaim contained in Defendant's answer herein, avers as follows with respect to the correspondingly identified paragraphs of the counterclaim:

1. Plaintiff admits the allegations of Paragraph 1.

2. Plaintiff admits the allegations of Paragraph 2.

3. Plaintiff admits that the counterclaim is an action for declaratory judgment brought under United States Code Title 28, Section 2201. Plaintiff admits that jurisdiction is predicated upon United States Code Title 28, Section 1338(a) and the patent laws of the United States, United States Code Title 35.

4. Plaintiff, upon information and belief, admits that Defendant manufactures and sells bowling games within this district and throughout the United States, and denies the remaining allegations of Paragraph 4.

5. Plaintiff admits the allegations of Paragraph 5.

6. Plaintiff admits that he has charged Defendant with infringement of United States Letter Patent No. 3,019,020, and that there exists an actual controversy between the parties as to the validity and infringement of United States Letters Patent No. 3,019,020, and denies the remaining allegations of Paragraph 6.

7. Plaintiff denies each and every allegation of Paragraph 7.

8. Plaintiff denies each and every allegation of Paragraph 8.

9. Plaintiff denies each and every allegation of Paragraph 9.

10. Plaintiff denies each and every allegation of Paragraph 10.

11. Plaintiff denies each and every allegation of Paragraph 11.

12. Plaintiff denies each and every allegation of Paragraph 12.

WHEREFORE, Plaintiff DAVID COHN, prays that Defendant's counterclaim be dismissed and that he be awarded judgment as prayed in the complaint.

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Of Counsel:

Paul H. Heller, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply To Counterclaim was served by first class mail, postage prepaid, upon Kenneth Pearson, Esq., Forsythe, LeViness, Harnett & Pearson, 375 Park Avenue, New York, New York 10022 this 5th day of June, 1975.

Paul H. Heller

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	
v.	)	No. 75 Civ. 2077
	)	
COLECO INDUSTRIES, INC.	)	Judge Knapp
	)	
Defendant	)	

NOTICE OF MOTION AND MOTION FOR
SUMMARY JUDGMENT OF NON-INFRINGEMENT

To: Paul H. Heller, Esq.
Attorney for Plaintiff
Kenyon & Kenyon Reilly Carr & Chapin
59 Maiden Lane
New York, New York 10038

Please take notice, that the undersigned will bring on this motion for hearing before Judge Knapp at the United States Court House, Foley Square, New York, New York on the 27th day of May, 1976 at two o'clock in the afternoon of that day or as soon thereafter as counsel can be heard.

Defendant moves for summary judgment of non-infringement on the ground that Plaintiff is estopped to assert for the claims of the patent in suit a scope so broad as to encompass Defendant's accused structure.

Defendant further moves for an award of attorneys fees under the provisions of 35 U.S.C. 285 on the basis that the present action is frivolous and without merit.

In support of this motion there are submitted herewith a Memorandum and an Affidavit of David M. Wetstone, as well as copies of composites of requests for admissions and interrogatories and copies of various exhibits which have been marked during a deposition of Plaintiff.

COLECO INDUSTRIES, INC.,
DEFENDANT

BY _____

Peter L. Costas
Attorney for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Motion and Motion for Summary Judgment of Non-Infringement was served by first class mail, postage prepaid, upon the following counsel:

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Dated: May 14, 1976

_____

Peter L. Costas
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff	)	CIVIL ACTION
v.	)	No. 75 Civ. 2077
COLECO INDUSTRIES, INC. Defendant	)	Judge Knapp

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT AS TO UNITED STATES LETTERS PATENT NO. 3,019,020

STATEMENT OF THE CASE

This is a motion for summary judgment of non-infringment of United States Letters Patent No. 3,019,020 granted on January 30, 1962 to Plaintiff DAVID COHN (hereinafter referred to as the Cohn patent). Appended hereto as Exhibit A is a copy of the file history of the Cohn patent, showing the prosecution of the patent application during proceedings in the Patent Office which ultimately resulted in said patent and which includes, on pages 1-5 thereof, a copy of the Cohn patent.

Defendant COLECO INDUSTRIES, INC. (hereinafter referred to as COLECO) has served Plaintiff with a Request for Admission of Facts and a set of interrogatories relative to the infringement question, and appended hereto as Exhibits B and C, respectively, are a composite of the Request for Admission of Facts and the responses thereto, and a composite of the interrogatories and responses thereto.

Although grounds for attacking the validity of the Cohn patent exist and are reserved, it is believed that the present motion for summary judgment is appropriate on the basis that the allegedly infringing device is clearly outside the scope of the claims of the Cohn patent and that this motion should be dispositive of the entire action.

The Alleged Invention of the Cohn Patent

The alleged invention of the subject Letters Patent is stated as being a toy bowling game comprising a flat, substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface, the base plate having upstanding flanges integral with the opposite side edges thereof. An inverted U-shaped frame extends over the base plate and has the lower opposite edges thereof secured to the flanges on the base plate. A substantially triangular shaped guide plate having relatively spaced openings therein is mounted on the frame. A supporting member which carries the bowling pins is disposed above the guide plate in spaced relation thereto and is mounted for movement relative to the base plate. Springs are positioned intermediate the guide plate and supporting member and bias the supporting member away from the base plate.

The bowling pins are connected to the supporting member by elastic strings and have a permanent magnet disposed in the bases thereof to the enable the pin to be attracted to the base plate. The strings are of such a length so that when only slightly extended they maintain the bowling pin raised above

and out of contact with the base plate, and when more fully extended permit the magnets on the pins to contact the metal base plate The pins are supported in an upright position on the base plate when the supporting member is depressed with the magnets resisting removal of the pins from the base plate by the elastic strings when the supporting member returns to its original position. The springs previously described bias the supporting member upwardly and retain it in normal spaced relation above the base plate.

Dependent claims 2 and 3, dependent upon Claim 1, further define the structure of the supporting member.

The Prosecution History of the Cohn Patent

Plaintiff's original patent application included sixteen claims, with Claims 1-3 being directed to a bowling pin, Claims 4-15 being directed to a bowling game assembly, and Claim 16 being directed to "the invention substantially as illustrated and described" (Exhibit A, pages 10-13; Exhibit B, Request No. 11). Claims 4 and 15 were independent claims and Claims 5-14 were claims dependent directly or indirectly on Claim 4 (Exhibit A, pages 10-13; Exhibit B, Request No. 12). Following a requirement for restriction on the basis that the application was directed to three distinct categories of alleged invention, Plaintiff's attorney elected to continue prosecution of Claims 4-14 with the remaining claims being withdrawn from consideration or, in the case of Claim 16, rejected on the basis of non-conformity with statutory requirements (Exhibit B, pages 17-20, 26-27).

In the Office Action dated January 7, 1960, Claims 4 and 5 were rejected by the Patent Office Examiner as being unpatentable over Lloyd United States Patent No. 2,217,063 (Exhibit A, pages 26-28; Exhibit B, Request No. 26), a copy of which is appended hereto as Exhibit D. Remaining Claims 6-14 were rejected as being unpatentable over various combinations of said Lloyd patent, Hedenskoog United States Patent No. 2,348,540, Dicker United States Patent No. 2,819,902, Jaufroid United States Patent No. 1,058,062 and Lemon United States Patent No. 2,900,188. Igou United States Patent No. 1,913,673 was cited as showing a spring-biased pin setting mechanism (Exhibit A, pages 26-28; Exhibit B, Request No. 27), and a copy thereof is appended hereto as Exhibit E.

Claim 4 as filed, which is the only independent claim in Claims 4-14 which were under examination and action, claimed a toy bowling game comprising, inter alia:

a. a flat metal base of magnetic material;

b. a supporting member secured to the base and extending over the latter in spaced relation thereto;

c. a bowling pin having a permanent magnet with north and south poles disposed at its base; and

d. an elastic string secured to the tip of the bowling pin and to the supporting member.

(Exhibit A, pages 10-11; Exhibit B, Request No. 28).

Lloyd Patent 2,217,063 (Exhibit D) describes a toy bowling game which has, inter alia:

a. a flat base 10, 38* having magnets 11 disposed in member 10;

b. a supporting member 28 secured to the base by stanchions 27 and extending over the base in spaced relation thereto;

c. a bowling pin 29 having a metallic element 31 in the base thereof;

d. an elastic string 33 secured to the base of a bowling pin and to a bracket 30 mounted on the supporting member 28.

The Examiner did not consider the reversal of the magnet and metallic element and securing the elastic to the top rather than to the bottom of the bowling pin to be inventive and of patentable significance (Exhibit A, page 27).

In response to the above-mentioned Office Action, independent Claim 4 was cancelled and new independent Claim 17 was substituted therefor by Plaintiff's attorney. The following limitations were added in the new claim to distinguish it and the claims dependent thereon over the prior art cited against Claim 4:

* Reference numerals are to the numbers employed in the specifications and drawings of the several patents discussed herein.

a. the supporting member was further defined as spring-urged and mounted for movem ent relative to the base plate;

b. the bowling pin was further defined as being carried by the supporting member;

c. the bowling pin was further defined as being supported in upright position on the base plate when the supporting member is depressed toward the base plate, the magnet resisting removal of the pin from the base plate when the supporting member is returned to its original position; and

d. the supporting member was further defined as automatically returning and being retained in normal spaced relation above the base plate.

(Ex hibit A, pages 31-32; Exhibit B, Request No. 31). Furthermore, Plaintiff's attorney stated that "...the claims remaining in this case (as amended) are believed to be in proper order and to distinguish patentably over the references of record" (Exhibit A, page 36; emphasis added).

In an Office Action dated October 26, 1960, pending Claim 17 and those claims dependent thereon were finally rejected on the basis of unpatentability over the Lloyd patent in combination with either the Hedenskoog patent or the Igou patent. Moreover, the Examiner did not consider the functional statements in the last seven lines of Claim 17 (corresponding to subparagraphs (c) and (d) of the preceding paragraph) to provide patentable significance (Exhibit A, pages 38-39; Exhibit B, Requests 32-33).

The Examiner considered the supporting member 28 of the Lloyd patent (Exhibit D) to be "spring-urged" in its stantionary position by upstanding stanchions 27 formed of spring steel, the stanchions 27 spring-biasing the supporting member against vertical movement (Exhibit A, page 38). Also, the bowling pins shown in the Lloyd patent are carried by the supporting member 28, 30. Thus, the two claim limitations (subparagraphs (a) and (b) in the preceding paragraph) added in Claim 17 to distinguish over the prior art, which were considered by the Examiner to be non-functional, were also considered by the Examiner to be disclosed or suggested by the Lloyd patent.

The Igou patent also discloses these two claim limitations as it has a pin holder 17 or supporting member which is spring urged by springs 20 and mounted for movement relative to an alley 1 or base (Exhibit A, page 39; Exhibit E).

In response to the Office Action dated October 26, 1960, Claim 17 was proposed to be amended by Plaintiff's attorney to distinguish the claims over the references cited thereagainst. This amendment added as a positive element "spring means normally urging said supporting member away from said base plate" (Exhibit A, pages 41-44; Exhibit B, Request 36). Underscoring the fact that the amendment was added to distinguish over the prior art is the statement of Plaintiff's attorney that "In view of the foregoing amendments and remarks it is respectfully submitted that Claim 17 patentably distinguishes from the references cited and is allowable thereover." (Exhibit B, page 43).

In an Office Action dated April 21, 1961, the proposed amendment to Claim 17 as set forth in the preceding paragraph was not entered since the Examiner indicated that if amended as proposed the claim would still be considered unpatentable over the Lloyd patent in view of the Igou patent (Exhibit A, page 45; Exhibit B, Request No. 37).

Following an interview between Plaintiff's attorney and the Examiner, Claim 17 was cancelled and Claim 18, identical to Claim 1 of the Cohn patent, was substituted therefor. Claim 18 included the following limitations not present in Claim 17 to distinguish over the prior art:

a. the base plate was defined as having upstanding flanges integral with the opposite side edges thereof;

b. an inverted U-shaped frame was added which was defined as extending over the base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on the base plate;

c. a substantially triangular shaped guide plate was added which was defined as having relatively spaced openings therein and being mounted on the U-shaped frame;

d. the supporting member was defined as being positioned above the guide plate and spaced therefrom; and

e. the spring means was further defined as being positioned intermediate the guide plate and supporting member for normally urging the supporting member from the base plate.

(Exhibit A, pages 46-48; Exhibit B, Request No. 39).

Following another interview between the Examiner and Plaintiff's attorney, Claim 19, identical to Claim 4 of the Cohn patent, was added to the pending application (Exhibit A, pages 50-52; Exhibit B, Request No. 40).

Thus, during the prosecution of the Cohn patent application, a series of restrictive amendments were made to the claims to distinguish over the prior art cited thereagainst in an effort to obtain allowance of the application. Appended hereto as Exhibit F is a claim chart comparing the sole independent claim as originally examined (Claim 4) to the two independent claims as allowed (Claims 18-19; patent claims 1 and 4) and clearly illustrating the scope of the limiting amendments.

The Allegedly Infringing Device Does Not Embody All the Structural Elements Required By Claims 1 and 4 of the Cohn Patent

As set forth in the affidavit of Dr. David M. Wetstone submitted herewith, the BOWL-A-MATIC 300 toy bowling game manufactured by Defendant, which was marked as Defendant's Exhibit H during the deposition of Plaintiff, does not include a number of significant structural limitations set forth in Claims 1 and 4 of the Cohn patent. More specifically, the allegedly infringing device does not have:

1. a flat substantially rectangular shaped metal base plate of magnetic material (Claim 1);

   or

   a flat substantially rectangular shaped metal base plate having an extensive upper surface (Claim 4);

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2. [illegible] flanges integral with the opposite side edges of such a base plate (Claims 1 and 4);

3. an inverted U-shaped frame extending over such a base plate in spaced relation thereto and having the lower opposite edges secured to flanges integral with the base plate (Claims 1 and 4);

4. a supporting member carrying a bowling pin which is positioned above a guide plate and spaced therefrom and mounted for movement relative to a base plate (Claims 1 and 4);

5. spring means positioned intermediate of a guide plate and such a supporting member for normally urging the supporting member away from a base plate (claims 1 and 4); and

6. an elastic string secured to a bowling pin and to a supporting member (Claims 1 and 4).

In response to Interrogatories 16 and 17 served on Plaintiff (Exhibit C), Plaintiff identified the structural elements of the allegedly infringing device which he considers to meet the structural limitations as specified in Claims 1 and 4 of the Cohn patent. For the convenience of the Court, comparison drawing figures from the Cohn patent and of the allegedly infringing game (from Freeman United States Patent No. 3,866,091 appended hereto as Exhibit G, which Plaintiff has admitted substantially illustrates the accused game; see Request No. 2 of Exhibit B) are appended hereto as Exhibit H with the "corresponding" structural elements as set forth by Plaintiff being similarly colored. Included in Exhibit H is a table showing the structural elements

of the accused game (designated by reference numerals of the Freeman patent, which is Exhibit G) which Plaintiff feels correspond to the elements of the claims 1 and 4 of the Cohn patent (Exhibit C; Interrogatories 16-17). A review of these figures and the table clearly shows that the elements of the accused device do not meet the configuration and disposition of the"corresponding" elements of the Cohn patent.

Plaintiff's Knowledge that His Claim of Infringement was Frivolous

On November 13, 1973, Arthur A. March, a patent attorney acting on behalf of Plaintiff, wrote to Defendant as shown on Defendant's Deposition Exhibit D, appended hereto as Exhibit J. As indicated in the body of the letter, Mr. March has previously contacted Arnold Greenburg (sic) by telephone, and the import of that contact by Mr. March was to indicate possible infringement of the Cohn patent by the Coleco BOWL-A-MATIC 300 bowling game.

Coleco acknowledged the letter of Mr. March by a letter dated November 26, 1973, a copy of which has been marked as Defendant's Deposition Exhibit E, appended hereto as Exhibit K. Defendant's counsel was asked to investigate the matter of the claim made by Mr. March.

Following extensive study of the Cohn patent, the file history of the application which matured into the Cohn patent, and the Coleco BOWL-A-MATIC game, a letter was sent to Mr. March pointing out in detail the structural limitations of the Cohn patent which were not applicable to the Coleco structure

and therefore the opinion of Coleco's counsel that the Cohn patent was not infringed by the Coleco game. A copy of this letter dated December 12, 1973 has been marked as Defendant's Deposition Exhibit F, appended hereto as Exhibit L.

There was no further contact with Mr. March or anyone acting on behalf of Plaintiff until the present action was commenced by a different attorney.

ARGUMENT

It is respectfully submitted that the facts set forth above, when reviewed in light of the applicable law, establish that the allegedly infringing game is clearly outside the claims of the Cohn patent and that the present action is totally frivolous.

Summary Judgment is Appropriate in Patent Matters Where There is No Genuine Issue of Material Fact

The law is settled that patent actions are to be treated as any other civil actions when deciding whether it is appropriate to grant a motion for summary judgment, i.e., that there be no genuine issue of material fact. Vermont Structural Slate Co. v. Tatko Bros. Slate Co., 233 F.2d 9 (2d Cir. 1956), cert. denied 352 U.S 917 (1956). See also 6 Moore's Federal Practice, Paragraph 56.17 [44] (2d Ed. 1974), page 2613 et seq. and the numerous citations in footnote 11.

Summary judgment in patent matters may be granted on the basis of non-infringement. Pittway Corp. v. Trine Mfg. Corp., 183 U.S.P.Q. 675 (S.D.N.Y. 1974); Mastini v. American Telephone and Telegraph Co., 236 F. Supp. 310 (S.D.N.Y. 1964), affirmed 369 F.2d 378 (2d Cir. 1966).

The Applicable Law Indicates That the Allegedly Infringing Game Does Not Infringe Plaintiff's Patent

An allegedly infringing device infringes a combination claim (a claim composed of a plurality of elements) only if each element of the claim finds a corresponding element or functional equivalent thereof in the accused device. Svenska Aeroplan Aktiebolaget v. Mergenthaler Co., 410 F. 2d 979 (2d Cir. 1969). As set forth in detail in the preceding factual discussion, the accused game does not have structural elments which correspond to:

1. a flat substantially rectangular shaped metal base plate of magnetic material (Claim 1);

   or

   a flat substantially rectangular shaped metal base plate having an extensive upper surface (Claim 4);

2. upstanding flanges integral with the opposite side edges of such a base plate (Claims 1 and 4);

3. an inverted U-shaped frame extending over such a base plate in spaced relation thereto and having the lower opposite edges secured to flanges integral with the base plate (Claims 1 and 4);

4. a supporting member carrying a bowling pin which is positioned above a guide plate and spaced therefrom and mounted for movement relative to a base plate (Claims 1 and 4);

5. spring means positioned intermediate of a guide plate and such a supporting member for normally urging the supporting member away from a base plate (Claims 1 and 4); and

6. an elastic string secured to a bowling pin and to a supporting member (Claims 1 and 4).

Thus, the allegedly infringing game clearly does not meet the structural limitations of Claims 1 and 4 of the Cohn patent, and Plaintiff must rely on the argument that the elements of Defendant's game identified in Interrogatories 16-17 (see Exhibits C and J) which he feels correspond to the elements of Claims 1 and 4 of the Cohn patent are functional equivalents thereof.

However, Plaintiff is estopped from asserting the range of equivalents necessary to include the accused game within the scope of the claims of the Cohn patent by the legal doctrine known as file wrapper estoppel. Under this doctrine, a patentee:

> "...may not recapture, by resort to the doctrine of equivalents, claim coverage he surrendered by amendment in order to overcome a rejection of the claims as unpatentable over the prior art."

Pittway, supra. See also Mastini, supra; Graham v. John Deere Co., 383 U.S. 1 (1966); Keith v. Charles E. Hires Co., 116 F. 2d 46 (2d Cir. 1940).

As set forth in detail hereinbefore, Plaintiff was required to limit his claims as filed quite extensively in order to secure allowance thereof (see Exhibit F, which underscores the restrictive amendments added to independent Claim 4 as filed).

The following denote the restrictive amendments added to the independent claim as filed (Claim 4) to secure allowance of patent claims 1 and 4 over the prior art which are not met by structural elements in the accused game:

a. upstanding flanges integral with the opposite side edges of the base plate;

b. an inverted U-shaped frame extending over the base plate in spaced relation thereto with the lower opposite edges thereof secured to the flanges on the base plate;

c. a supporting member carrying a bowling pin positioned above the guide plate and spaced therefrom which is mounted for movement relative to the base plate; and

d. spring means positioned intermediate the guide plate and the supporting member.

As set forth hereinbefore, the allegedly infringing game has none of these structural elements as specifically described, the underlined words above indicating the key limitations which are not met by the accused device.

The doctrine of file wrapper estoppel attaches definite significance to structural limitations added to secure allowance and precludes their being

ignored when deciding the question of infringement. In Pittway, supra, the patentee had added by amendment the specific location of an element of the claim to secure allowance thereof, and the defendant was granted summary judgment of non-infringement on the basis that the accused device did not have the corresponding element disposed as called for by the claim. The established facts in this action clearly show that the accused game does not have, inter alia, a movable supporting member carrying a bowling pin which is positioned above a guide plate, nor does it have spring means positioned intermediate the guide plate and supporting member.

Thus, Plaintiff is precluded by law from so construing the claims of his patent to cover the structure of the accused game and Defendant respectfully submits that non-infringement of Claims 1 and 4 of the Cohn patent has clearly been established. The remaining claims of the Cohn patent, Claims 2 and 3, are dependent on Claim 1 and incorporate all the limitations thereof; thus, the accused device does not infringe Claims 2 and 3 for the same reasons set forth with respect to Claim 1.

Defendant Is Entitled to Attorney Fees Under 35 U.S.C. Section 285

Title 35, United States Code, Section 285 states that:

> The Court in exceptional cases may award reasonable attorney fees to the prevailing party.

In a somewhat recently developed line of cases, courts have awarded attorney fees under Section 285 to prevailing defendants in patent infringement actions where it could not be seriously argued that the plaintiff's patent was infringed. Lincoln v. Mademoiselle, 131 U.S.P.Q. 32 (S.D.N.Y. 1961); Wood Products Development Co. v. Cloud Flooring Co., 267 F. Supp. 193 (W.D. Mo. 1966); Kaehni v. Diffraction Co., Inc., 342 F.Supp. 523 (D. Md. 1972).

The Court in Kaehni, supra, held that a case is "exceptional" within the meaning of 35 U.S. C. Section 285 where "the allegation of infringement is frivolous and/or asserted without reasonable care and sufficient justification." As a result of the severely limiting file wrapper amendments discussed in the previous sections, which Plaintiff's attorney knew of or certainly should have known of, and the obvious fact that the restricted claims of the Cohn patent cannot in any conceivable manner be read on the accused device, the present action is certainly frivolous and without sufficient justification. The doctrine of file wrapper estoppel is so well entrenched in patent law that the Court is requested to take judicial notice of the fact that any registered patent attorney is quite familiar with the effect thereof on the scope of patent claims.

That the present action was brought without reasonable care is borne out by the fact that Plaintiff, although he has a sample of the accused game in his possession, never even bothered to assemble it prior to filing suit (pages 32-35 of Plaintiff's deposition, appended hereto in Exhibit I). Plaintiff's allegation of infringement was apparently based on the "similarity" between his patented game and a picture on the box within which the accused game is distributed (Exhibit I).

As pointed out hereinbefore, Plaintiff's patent attorney Arthur March had earlier contacted Defendant relative to the patent in suit (Defendant's deposition Exhibit D, appended hereto as Exhibit J), and been advised in detail why the Coleco accused game did not embody the alleged invention of the Cohn patent (Defendant's deposition Exhibit F, appended hereto as Exhibit L). Neither that attorney nor Plaintiff again contacted Defendant until until a new attorney filed this action on behalf of Plaintiff, although Plaintiff repeatedly attempted over eighteen months to have Mr. March institute an infringement action (pages 38-41 of Cohn deposition; Exhibit I).

The Court in Lincoln, supra, held that since there was no reasonable basis for the filing of the infringement action, the defendant should not have to suffer the burden of its counsel fees:

> "Because of the unfairness or bad faith of the plaintiff (in filing the action), the court finds that it would be grossly unjust not to award such sum (reasonable attorney fees) to the defendant."

Moreover, the decision in Lincoln was reached on a motion for summary judgment of invalidity and non-infringement.

It is respectfully submitted that the facts in this action bear out Defendant's allegation that the suit was filed with no reasonable basis for the infringement allegation and that the action is completely frivolous, thus bringing the case within the meaning of 35 U.S.C. Section 285. Should the Court find for Defendant on this issue, Defendant will submit billing statements showing the amount of money expended thus far in defending what it considers harrassing and unmerited litigation.

The Law Applied to the Incontrovertible and Admitted Facts Warrants Summary Judgment of Non-Infringement of United States Patent No. 3,019,020 and the Awarding of Attorney Fees to Defendant

The facts discussed hereinbefore are incontrovertible and/or admitted. When considered in light of the applicable law, the record warrants summary judgment of non-infringement on the basis of file wrapper estoppel limiting the scope of protection which Plaintiff's entitled to assert. Furthermore, the record indicates that the action is totally without merit and on that basis Defendant is entitled under 35 U.S.C. Section 285 to its reasonable attorney fees.

SUMMARY

In view of the clear fact of non-infringement, Defendant COLECO INDUSTRIES, INC. respectfully requests that summary judgment of non-infringement be granted. Since the action is completely unjustified, Defendant is entitled to an award of its attorney fees.

Respectfully submitted,

DEFENDANT COLECO INDUSTRIES, INC.

By _____

Peter L. Costas
Attorney for Defendant
3 Lewis Street
Hartford, Connecticut 06103
203-278-9892

PLTF. EXBT. B FOR IDENT.

EXHIBIT A
40

DEFT. EXBT. 11/11/75 M. KORENMAN

Jan. 30, 1962 D. COHN 3,019,020

BOWLING GAME

Filed Oct. 20, 1958 2 Sheets-Sheet 1

Fig. 1

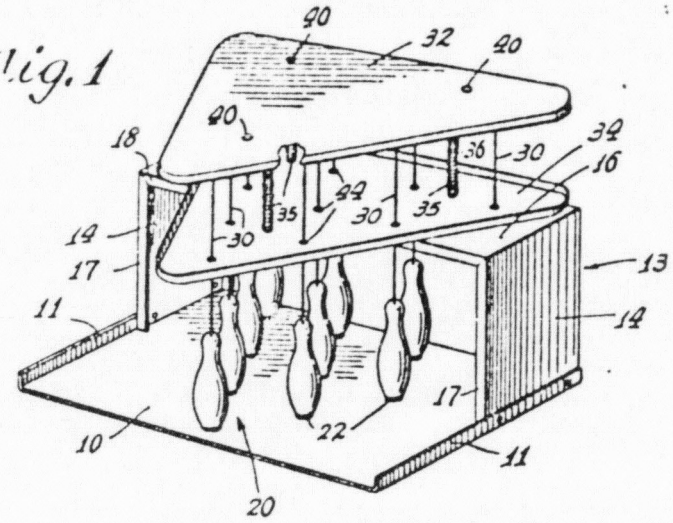


Fig. 2

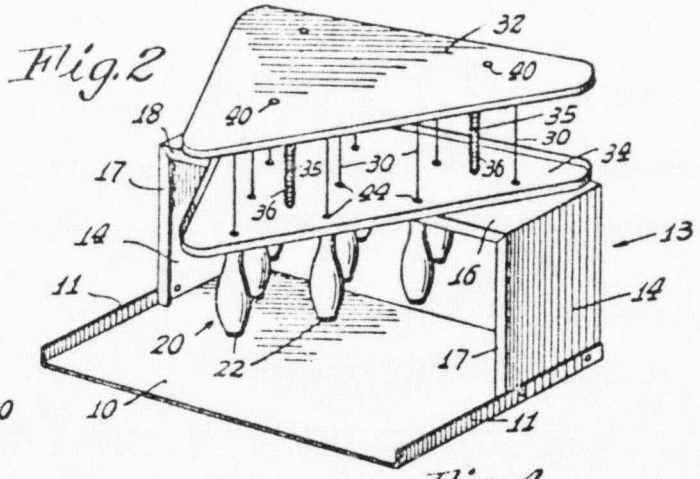


Fig. 3

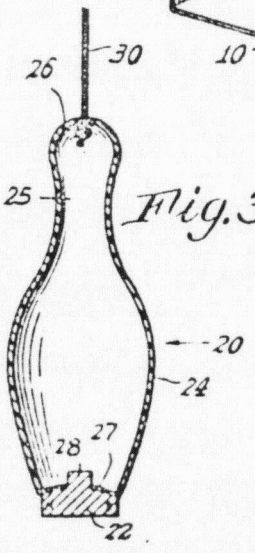
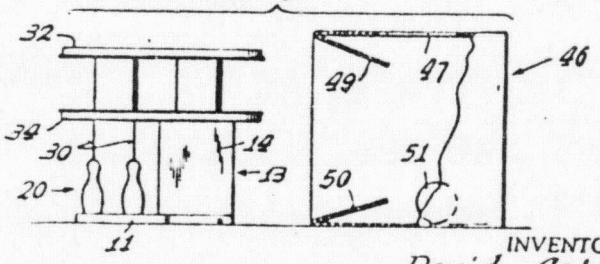


Fig. 4



INVENTOR.
David Cohn

BY

Munn, Liddy, Daniels & March
ATTORNEYS

Exhibit A

Jan. 30, 1962 D. COHN 3,019,020

BOWLING GAME

Filed Oct. 20, 1958 2 Sheets-Sheet 2

Fig. 6

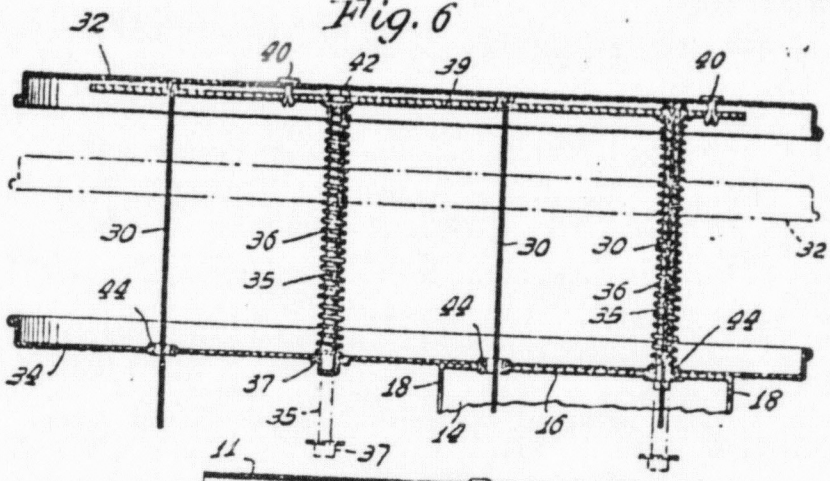
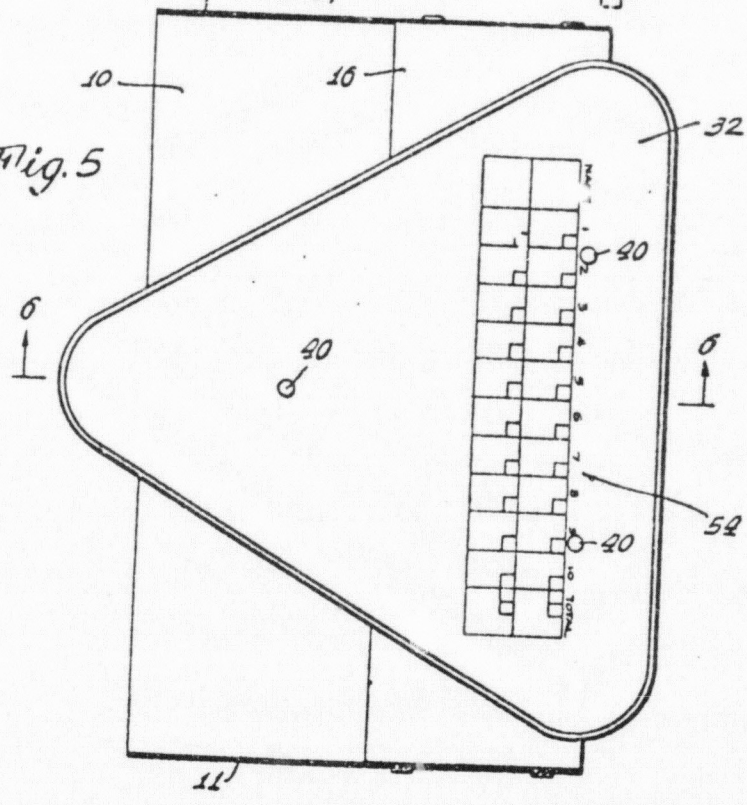


Fig. 5



INVENTOR
David Cohn

BY
Munn, Liddy, Daniels & March
ATTORNEYS

United States Patent Office

3,019,020

Patented Jan. 30, 1962

3,019,020
BOWLING GAME

David Cohn, 123 Coleridge St., Brooklyn, N.Y.

Filed Oct. 20, 1958, Ser. No. 768,278
4 Claims. (Cl. 273—44)

This invention relates to game devices, and more particularly to a bowling game intended to be played on a large flat surface, such as the floor surface of a room or the like.

An object of the invention is to provide a novel and improved toy bowling game which is especially interesting and calculated to arouse the enthusiasm of youngsters and other persons playing it.

A further object of the invention is to provide a novel and improved bowling game wherein the pins may be especially quickly set up and retained in position on a base plate, and wherein the said pins when struck by the ball will be automatically removed from the base plate to positions at least partially out of the way of subsequent balls.

An additional object of the invention is to provide a toy bowling game as above set forth, wherein the pins are at all times held captive, both when set up and after being struck and wherein after the pins have been struck they are automatically removed from the base plate on which the rest, and may be later quickly simultaneously replaced thereon by but a single simple movement or operation on the part of the player.

Yet another object of the invention is to provide an improved toy bowling game in accordance with the foregoing, which is constituted to the greatest possible extent as a unitary device or assemblage while still retaining the feature of having separate playing balls, as in regular bowling equipment.

An additional object of the invention is to provide a toy bowling game as outlined above, wherein the balls after being put into play and striking the pins, are collected and held captive in a novel receptacle, facilitating their reuse and further simplifying and making convenient the playing of the game.

Features of the invention include the provision of a novel toy bowling game as characterized, which is competitive in its nature, requires an appreciable amount of skill to play well, is easy to play and to score, and may be played virtually anywhere, indoors and also outdoors.

Still another object of the invention is to provide an improved toy bowling game having the above advantages and which is nevertheless simple in its construction, inexpensive to produce, and durable and practical whereby it will withstand appreciable hard usage without failure.

Other features and advantages will hereinafter appear.

In the drawings accompanying this specification, similar characters of reference are used where possible to indicate like components throughout the several views, in which:

FIGURE 1 is a perspective view of the improved bowling game, with the bowling pins set in place on the baseplate.

FIG. 2 is a view like FIG. 1 but showing the pins as being automatically retracted or removed from the base plate.

FIG. 3 is a vertical, axial sectional view of one of the bowling pins as provided by the invention.

FIG. 4 is a side elevational view of the bowling game, and a view partly in side elevation and partly in vertical section of a novel receptacle for use in playing the game, positioned to receive and hold captive the bowling balls after they have been put into play.

FIG. 5 is a top plan view of the toy bowling game.

FIG. 6 is a vertical sectional view of the upper portion of the game, taken on the line 6—6 of FIG. 5.

Referring first to FIGS. 1 and 2, the improved bowling game of the invention comprises a thin, flat base plate 10 having an extensive upper surface, said base plate being constituted of magnetic sheet metal such as sheet steel, and being preferably provided with a pair of upstanding flanges 11 along its opposite side edges.

In conjunction with the base plate 10 and constituting therewith an enclosure which is open at the front and back there is provided an inverted U-shaped frame 13 formed preferably from a relatively wide strip of sheet metal, said frame having upright members 14 secured to the side flanges 11 of the base plate 10 at the rear portions thereof. The inverted frame 13 has a flat cross member 16 which is disposed above the rear portion of the base plate 10, in spaced relation therewith. For strengthening purposes the uprights 14 and the cross member 16 of the frame 13 are preferably provided with flanges 17 and 18, as shown. It will be understood that the above described, construction embracing the base plate 10 and the inverted U-shaped frame 13 constitutes an enclosure which is open at both the front and the rear, as clearly seen in FIGS. 1 and 2.

In accordance with the present invention, novel bowling pins 20 are provided, FIGS. 1–3 so arranged that they are attracted to the magnetic base plate 10 and firmly supported thereon in upright positions as shown in FIG. 1. The support of the bowling pins 20 is not dependent on their being placed at certain particular locations on the base plate 10 but instead the said pins will be supported in an upright position at any location on the base plate, where they are placed.

Referring to FIG. 3, this is accomplished by the provision of permanent magnets 22, constituting the base portions of the bowling pins 20. Preferably, as illustrated herein, the bowling pins 20 are molded of a plastic material, in the form of hollow bodies having bulbous body portions 24, reduced neck portions 25 and bulbous tip portions 26 constituting the upper extremities of the pin. At their lower portions, the pins 20 may have transverse bottom walls 27 provided each with a central perforation, and the permanent magnets 22 may have upstanding protuberances 28 adapted to extend into the apertures of the bottom walls 27 for positioning purposes and to aid in the retention of the permanent magnets on the pin body portion. In effecting such retention any suitable adhesive may be employed, or other means, as will be readily understood.

By the provision of the novel bowling pins 20 having light, hollow plastic bodies and relatively heavy permanent magnet base portions 22 the pins will be firmly held in upright positions on the base plate 10 when properly placed thereon. However, should the bowling pins be struck or jarred appreciably, they will be readily dislodged from the base plate 10, either falling over or leaving the base plate entirely.

Further, in accordance with this invention, novel means are provided by which the bowling pins 20 after having been struck by a bowling ball, are lifted entirely from the base plate 10 automatically, so as to be removed at least to a great extent from the field of play. The bowling pins 20 may be automatically lifted upward after being struck and suspended above the base plate 10 to completely clear subsequent bowling balls, or they may be lifted a lesser distance so as to enable only the lower portions thereof to be disposed in the path of subsequent balls.

In accomplishing such automatic removal of the bowling pins 20 from the base plate 10 the pins are provided with elastic strings 30, in accordance with the invention, such strings being secured to the bulbous tip portions 26 of the bowling pins and being also fastened to a triangular-shaped reset part or plate 32 which is mounted above the

base plate 10 so as to be vertically movable with respect thereto between predetermined limits. As shown, ten of the bowling pins 20 are suspended from the reset plate 32 so as to form the usual well-known triangle composed of four pins on a side. Each of the elastic strings 30 is so constituted and has a length that when slightly extended, as by experiencing the weight of one of the bowling pins 20, it will suspend such pin above the base plate 10 in spaced relation thereto. The spacing thus established between the suspended bowling pin 20 and base plate 10 may be greater than the diameter of the bowling balls; or it may be slightly less than the diameter of a bowling ball, in which case any suspended pins which are in the path of a ball will be struck by the same and may swing about its suspension while at the same time offering relatively little resistance to continued movement of the ball. Depending on the size of the bowling pins and the spacing between them, such a suspended struck pin when swinging may strike adjoining pins which are still held firmly by the base plate. Or, they may clear such adjoining pins, thereby to make more difficult the securing of higher scores after an initial hit by a ball.

The above organization, as provided by the invention, results in a number of desirable features and advantages. For one thing it enables all of the bowling pins after they have been struck to be quickly and easily, accurately replaced on the base plate 10 by a single simple operation on the part of the player, without requiring any skill or care whatsoever. This will be brought out in detail further below. Also, by the provision of the elastic strings 30, the bowling pins 20 when struck may be automatically removed and lifted from the base plate 10, so as to be out of the way of subsequent balls which are put into play. Additionally, the pins 20 will at all times be held captive, and are not loose so that they will be prevented from becoming misplaced or lost, or getting underfoot where they may cause an accident to a person walking and unaware of their presence.

By the present invention the reset plate 32 is movably mounted on the inverted U-shape frame 13 and a guide means is provided through which the elastic strings 30 pass, thereby to facilitate the accurate positioning of the bowling pins on the base plate 10 at the time that the pins are being reset. The said guide means comprises a triangular guide plate 34 having generally the same outline and size as the reset plate 32. The guide plate 34 is disposed below the reset plate 32 and connected to the latter by the plurality of plunger rods 35 and helical compression springs 36 carried by said rods. The springs 36 are disposed between the reset and guide plates and at their ends they may engage the said plates, thereby to yieldably hold the reset plate in a raised position. The plunger rods 35 extend downward through suitably spaced openings in the guide plate 34, as shown in FIG. 6, and have abutment shoulders 37 on their lower extremities to hold the rods captive in the guide plate. Preferably, as shown in FIG. 6, the reset plate includes a sub-plate 39 which is disposed under the reset plate in closely spaced relation thereto and fastened by means of suitable rivets 40. The plunger rods 35 have heads 42 which are held captive between the reset plate 32 and the sub-plate 39, as shown. Also, the elastic cords 30 may advantageously pass through the sub-plate 39 and be secured between the latter and the reset plate 32, as by the use of suitable knots or the like. The guide plate 34 has a plurality of openings and eyelets or anti-abrasion bushings 44 disposed in said openings, through which the elastic strings 30 pass. Several of such eyelets 44 may be utilized to secure the guide plate 34 to the cross member 16 of the inverted U-shaped frame 13, as seen in FIG. 6.

It will now be understood that by the above organization the bowling pins 20 may be suspended above the base plate 10 with their upper extremities in engagement with the lower surface of the guide plate 34, as seen in FIG. 2. When the pins are so suspended they may be spaced from the base plate 10 either by a distance greater than the diameter of a bowling ball or else a distance slightly less than such a diameter.

In accordance with the invention, when it is desired to reset the entire group of bowling pins 20, it is merely necessary for the operator or player to depress the reset plate 32. This is made possible by the movable mounting of such plate as provided by the plunger rods 35, and by the resiliency of the springs 36 which yield in response to downward pressure on the reset plate. The bowling pins 20 will all be simultaneously lowered until the permanent magnet base portions 22 thereof come into engagement with the base plate 10. The said magnets will then attract the base plate, pulling the bowling pins downward and causing them to be firmly held and supported in an upright position on the base. Upon release of pressure on the reset plate 32 the latter will again shift upward until halted by engagement of the abutment shoulders 37 on the plunger pins 35 with the underside of the guide plate 34. However, since the permanent magnets 32 are much stronger than the elastic strings, the bowling pins 20 will remain in their proper positions on the base plate 10, and the elastic strings will stretch as the reset plate 32 is released.

The game is now in readiness for the players to put the bowling balls in action. When a ball is thrown and strikes one or several bowling pins 20 the said pins will be dislodged from the base plate 10 and due to the continuing upward influence exerted by the elastic strings 30, the struck pins will be raised from the surface of the base plate and held suspended immediately below the guide plate 34, as shown in FIG. 2. When all of the pins have been struck, or when the player has thrown his allotted number of balls the task of resetting the bowling pins may be easily accomplished, by merely depressing the reset plate 32 as will be now understood.

Also, in accordance with the present invention a novel receptacle 46 is provided to receive the balls which have been put into play after they pass through the enclosure constituted of the base plate 10 and the inverted U-shaped frame 13. Referring to FIG. 4, the receptacle 46 may be constituted as a cardboard box having a size suitable for receiving and storing the game assemblage shown in FIGS. 1 and 2.

The box 46 may have an opening 47 in its top, large enough to pass a player's hand when he is holding one of the bowling balls. Also, the box 46 has an open front, and is provided with inturned, angularly extended flaps 49 and 50 which are so arranged that they will hold captive the bowling balls 51 which are made to enter the receptacle 46. Such balls may then be conveniently removed by the players, for subsequent use. By the provision of the receptacle 46 the bowling balls 51 are prevented from straying or becoming lost, or getting underfoot whereby may cause an accident.

As shown in FIG. 5, the reset plate 32 may be provided with suitable indicia as in the form of a scoring table or chart 54 adapted to be marked by chalk or suitable equivalent means, whereby the players may keep track of their individual scores, just as with regular bowling games.

It will be understood that there has thus been provided in accordance with the invention a novel and improved toy bowling game having many features by which the interest and enthusiasm of the players will be aroused and held. The game is competitive in its nature, involves a certain amount of skill to play well, and is easy to play and to score. At all times the bowling pins will be held captive, and may be easily and quickly reset by a single operation on the part of a player, without requiring the usual care in place the pins exactly in the required triangular configuration. The bowling pins will be kept from straying or becoming lost, and will not be likely to get underfoot. The bowling game is constituted to

4

the greatest possible extent as the unitary device. It is durable and practical, relatively simple and inexpensive to manufacture, and may be played anywhere, either indoors or outdoors.

Variations and modifications may be made within the scope of the claims, and portions of the improvements may be used without others.

I claim:

1. A toy bowling game comprising a flat substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface, said base plate having upstanding flanges integral with the opposite side edges thereof, an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on said base plate, a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame, a supporting member positioned above said guide plate and spaced therefrom, said supporting member being mounted for movement relative to said base plate, spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate, a bowling pin carried by said supporting member and having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on said base plate in upright position, an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate, said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the magnet on the bowling pin to contact the metal base plate, said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnet resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position, and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.

2. The invention as defined in claim 1, in which the said supporting member has a horizontally extending reset part mounted thereon, and in which there is means for mounting said reset part on said supporting member for vertical movement with respect to said base whereby the reset part when depressed lowers the bowling pin onto the base to enable the magnetic attraction of the said permanent magnet to secure and hold the pin on said base, said reset part when raised after being so depressed causing the elastic string to be elongated and stretched.

3. The invention as defined in claim 2, in which there is a spring means yieldably holding the said reset part in a raised position wherein the elastic string is appreciably stretched at the time that the pin is being held to the base by the magnet.

4. A toy bowling game comprising a flat substantially rectangular shaped metal base plate having an extensive upper surface, said base plate having upstanding flanges integral with the opposite side edges thereof, an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with said flanges and secured to said base plate, a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame, a supporting member positioned above said guide plate and spaced therefrom, said supporting member being mounted for movement relative to said base plate, spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate, a bowling pin carried by said supporting member, magnetic means for attracting the pin to the base plate to enable the pin to be supported on said base plate in upright position, an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate, said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the base of the bowling pin to contact the metal base plate, said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnetic means resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position, and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.

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1,291,427	Cumming	Jan. 14, 1919
1,896,383	White	Feb. 7, 1933
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APPEAL NO. 458 25

768278 SERIAL NO. (Series of 1948)	P. R. Div.		PATENT NUMBER 3019020
Assistant examiner	Class 27	Subclass	DATED JAN 30 1962
Division No. 2	Filed complete (Date) OCT. 20, 1958	Serial No. 768 278	CLAIMS FOREIGN PRIORITY: Country / Date
Applicant(s) (31) COHN, DAVID of BROOKLYN, N.Y. 123 Coleridge St			Number claims allowed 4 / Print claim(s) 4 / Class 273 / Subclass 44

Assignor to

Title of invention: TWILING GAME

☐ Division of ☐ Continuation of ☐ Substitute for abandoned ☐ Continuation-in-part of

APPLICATION Serial No. / Filed

APPLICATION Serial No. / Filed

Drwg.	Extra claims	Filing fee	Transaction	Atty's docket
		$30	48591	

Now Patent No. / Granted

Send correspondence to: ~~COHN, LIDDY, DANIELS & MARCH 120 W. 40TH ST. NEW YORK 18, N.Y.~~ March, Gilfillan, Virgil & Eslinger 125 Park Ave., New York 17, N.Y.

Principal attorney(s): ~~COHN, LIDDY, DANIELS & MARCH~~ March, Gilfillan, Virgil & Eslinger

Associate attorney(s): Arthur A. March & James E. Curtiss, 125 Park Avenue, New York 17, New York

PARTS OF APPLICATION FILED SEPARATELY

PREPARED FOR ISSUE: A.O. Oechsle (Assistant Examiner) / C. Desmules (Docket Clerk)

EXAMINED AND PASSED FOR ISSUE: E.E. Fuller 62 Acting (Primary Examiner) (Division)

NOTICE OF ALLOWANCE MAILED: JUN 20 1961

FINAL FEE: Date DEC 5 1961 / Amount $30.00

6

[THIS SPACE RESERVED FOR RETENTION LABEL]

[THIS SPACE RESERVED]

APPEAL NO. 458

CONTENTS

1. Application ✓ papers.
2. Specs Oct. 29, 1958
3. Restriction JAN 24 1959
4. Amdt A & Elec. Oct. 16, 1959
5. Petition to Make Special Oct. 16, 1959
6. Petition Granted Nov. 23, 1959
7. PETITION JAN 4 1960
8. Rel. Ex Pl'a tty. Apr. 27, 1960
9. NOTICE OF REV. & ACCEPT. MAY 2 - 1960
10. Amdt B July 7, 1960
11. FINAL REJECTION OCT 26 1960
12. Ass. Power Atty. Nov. 14, 1960
13. Amdt C (No E) April 18, 1961
14. LETTER APR 21 1961
15. Amdt D (No E) April 26, 1961
16. APPEAL NO 458 25 Apr. 26, 1961
17. Amdt E (No E) May 12, 1961
18. List of References JUN 12 1961
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SEARCHED

Class	Sub	Date	Ex'r
273	44 82	4/14/59 cursory search	aoo
273	44	12/8/59	aoo
273	37 42 43 46	12/9/59	aoo
273	44 42 43 37	To date 10-14-60	aoo
273	44 42 37	To date 5-23-61	aoo

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SYMBOLS	STATUS
√	Rejected
–	Allowed
– (Through numeral)	Canceled
+	Restriction requirement
N	Nonelected invention or species
I	Interference
A	Appeal

16—11578-6

8

SPECIFICATION: See specification of patent without change.

I CLAIM:

1. A toy bowling pin comprising an elongate body having a bulbous lower portion provided with a base of reduced diameter and having an upstanding neck portion terminating in a bulbous tip; and a magnetic base comprising a permanent magnet, secured to the said base of the pin, said magnetic base having a flat bottom surface and having north and south poles at said bottom surface whereby the pin will be attracted to and held upright on a sheet of magnetic material.

2. The invention as defined in claim 1, in which the bowling pin is constituted of a hollow plastic body having an apertured bottom wall and in which the magnet is constituted of a member having an upwardly projecting protuberance adapted to enter and fit the aperture of the bottom wall, thereby to facilitate the fastening of the magnet to the bowling pin body.

3. A toy bowling pin comprising an elongate body having a bulbous lower portion provided with a base of reduced diameter and having an upstanding neck portion terminating in a bulbous tip; a magnetic base comprising a permanent magnet, secured to the said base of the pin, said magnetic base having a flat bottom surface and having north and south poles at said bottom surface whereby the pin will be attracted to and held upright on a sheet of magnetic material; and an elastic string attached to the bulbous tip of the pin and adapted to extend axially away from the pin, for the purpose of suspending the same from an overhead support.

4. A toy bowling game comprising a flat metal base of magnetic material having an extensive upper surface; a supporting member secured to the said base and extending over the latter in

9267

spaced relation thereto; a bowling pin having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on the flat base plate in upright position; and an elastic string secured to the tip of the bowling pin and to the said supporting member extending over the base, said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with the said metal base, and when more fully extended it will permit the magnet on the bowling pin to contact the metal base, said pin being supported thereby in upright position and said magnet resisting removal of the pin from the base by the said elastic string.

2. The invention as defined in claim 1, in which the said supporting member has a horizontally extending reset part mounted thereon and in which there is means for mounting said reset part on said supporting member for vertical movement with respect to said base whereby the reset part when depressed lowers the bowling pin onto the base to enable the magnetic attraction of the said permanent magnet to secure and hold the pin on said base, said reset part when raised after being so depressed causing the elastic string to be elongated and stretched.

6. The invention as defined in claim 5, in which there is a guide means rigidly mounted on the base, through which the said elastic string passes to guide the same and position the bowling pin whereby the latter is lowered at a predetermined location on the base.

7. The invention as defined in claim 6, in which there is a spring means yieldably holding the said reset part in a raised position wherein the elastic string is appreciably stretched at the time that the pin is being held to the base by the magnet.

8. The invention as defined in claim 7, in which the guide means comprises a guide plate disposed under and in spaced relation to the said reset part, and in which the spring means comprises a compression spring disposed between the reset part and guide plate, for maintaining the reset part normally in a raised position.

9. The invention as defined in claim 8, in which the guide plate has an aperture provided with an anti-abrasion bushing through which the said elastic string passes, said bushing constituting a part of the said guide means for the string.

10. The invention as defined in claim 8, in which the means for movably mounting the reset part also constitutes a means for

mounting the guide plate on the base plate and comprises an inverte U-shaped frame having a pair of uprights secured to the base plate and having a cross member on which the said guide plate rests and to which it is attached.

11. The invention as defined in claim 10, in which there are additional bowling pins having permanent magnets on their base portions and having elastic strings secured to their upper extremities, said elastic strings being secured to the said reset part and in which the guide plate has additional apertures and anti-abrasion bushings through which the said elastic strings pass for positioning the additional bowling pins in predetermined positions on the said base.

12. The invention as defined in claim 5, in which the reset part has indicia on its top surface, constituting a scoring chart adapted to be written on, for keeping score.

13. The invention as defined in claim 6, in which the guide means comprises a triangular-shaped plate disposed below and spaced from the said reset part, in which said reset part is a triangular plate having edges disposed above and parallel to the edges respectively of the guide plate, in which there are addition

bowling pins having magnetic bases and having elastic strings secu to their upper extremities and to said guide means, and in which t said guide means includes additional apertures and bushings in the guide plate, through which the elastic strings pass, all of said bowling pins being disposed so as to outline a triangle.

14. The invention as defined in claim 13, in which the means mounting the reset part also constitutes the means mounting the guide plate, said means comprising an inverted U-shaped frame having a flat cross member underlying and secured to the said guide plate.

15. A bowling game comprising an enclosure open at the front and at the rear, and having a flat bottom plate constituting a base on which bowling pins may be set; and a receptacle for bowling balls which are rolled through said enclosure from the front to the rear thereof, said receptacle comprising a box having an open front and an open top, said front having inwardly extended angularly disposed flaps enabling the bowling balls to readily enter the receptacle when it is placed with the said open front adjacent the open back of the enclosure, said flaps tending to prevent discharge of the balls from the receptacle and said open top permitting ready removal of the said balls.

~~16. The invention substantially as illustrated and described.~~

add B'
" D'
" E'

54 ( )

Oath, Power of Attorney, and Petition

Being duly sworn, I, DAVID COHN

depose and say that I am a citizen of the United States of America residing at Brooklyn, County of Kings, State of New York; that I have read the foregoing specification and claims and I verily believe I am the original, first, and sole inventor of the invention or discovery in BOWLING GAME

described and claimed therein; that I do not know and do not believe that this invention was ever known or used before my invention or discovery thereof, or patented or described in any printed publication in any country before my invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application; that this invention or discovery has not been patented in any country foreign to the United States on an application filed by me or my legal representatives or assigns more than twelve months before this application; and that no application for patent on this invention or discovery has been filed by me or my representatives or assigns in any country foreign to the United States, except as follows:

Daniels

And I hereby appoint MUNN, LIDDY, ~~XXXXXXX~~ & MARCH, Registration No. 13032, my attorney or agent with with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent Office connected therewith.

Wherefore I pray that Letters Patent be granted to me for the invention or discovery described and claimed in the foregoing specification and claims, and I hereby subscribe my name to the foregoing specification and claims, oath, power of attorney, and this petition, this 14th day of October, 1958

Inventor _____
First Name Middle Initial Last name

Post Office Address { 123 Coleridge Street
Brooklyn, New York

State of New York
County of Kings } ss

Before me personally appeared DAVID COHN, *to me known to be the person described in the above application for patent, who signed the foregoing instrument in my presence, and made oath before me to the allegations set forth therein as being under oath, on the day and year aforesaid.*

Notary Public

SEAL

ANTHONY SINICROPI
Notary Public, State of New York
No. 24-0024100
Qualified in Kings County
Cert. filed with Kings Co. Register
Term Expires March 30, 1960

This form may be executed only when attached to a complete application as the last page thereof.

DANIELS
MUNN, LIDDY, ~~XXXXXXX~~ & MARCH
24 WEST 40th STREET
NEW YORK 18, N. Y.

Approved Single Signature Form
Sole Inventor
"307"

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#3,019,020
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1958 OCT 29

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Fig. 1

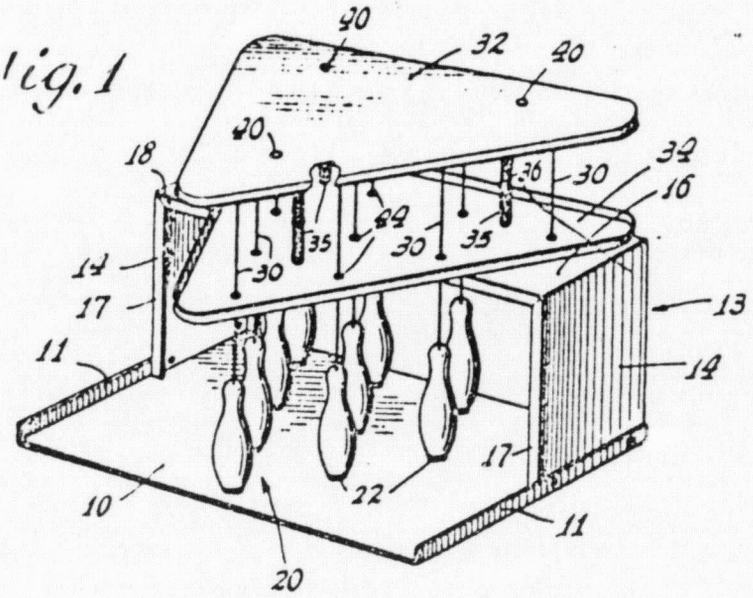


Fig. 2

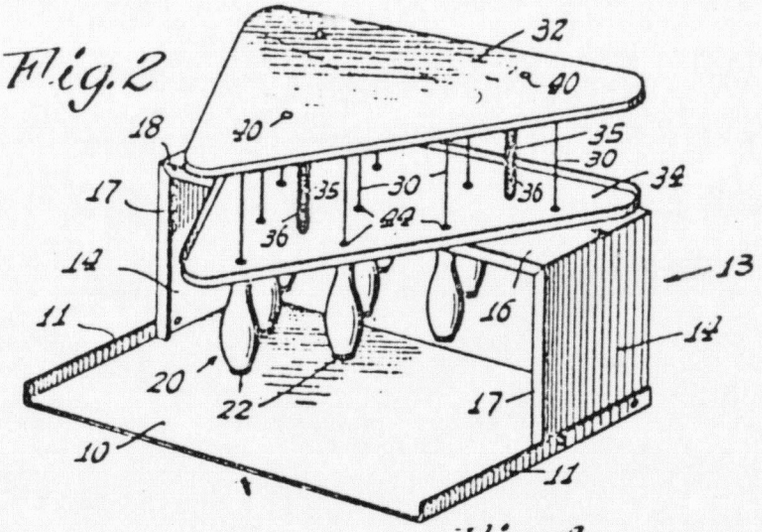


Fig. 3

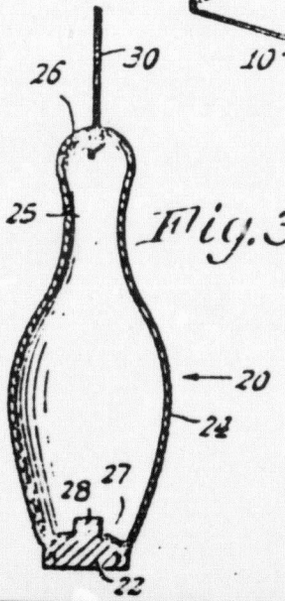
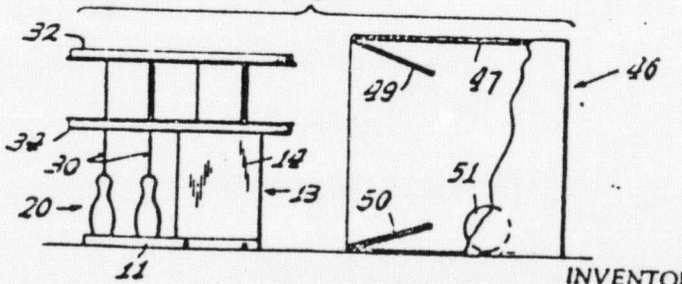


Fig. 4



INVENTOR.
David Colin

BY

Munn, Liddy, Daniels & March

ATTORNEYS

1958 OCT 29

768278

DIV. 62

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Fig. 6

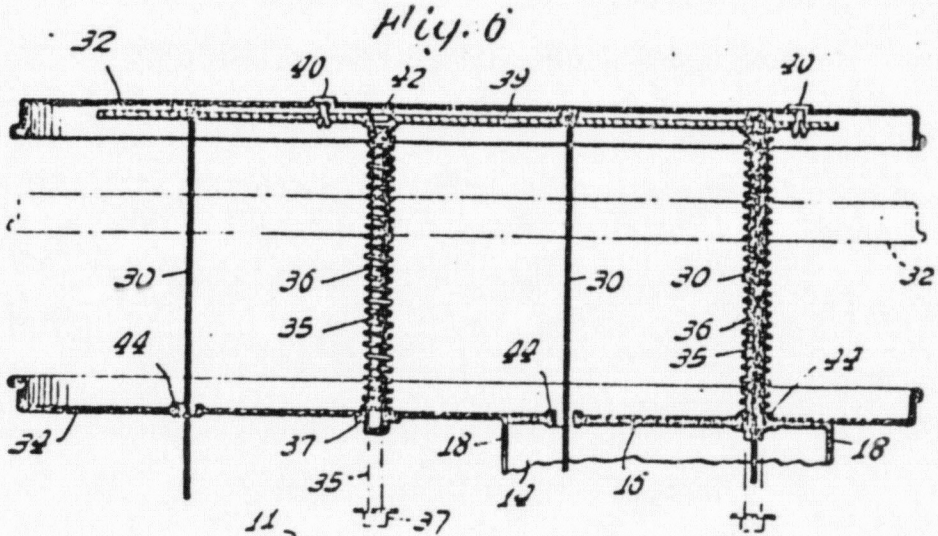
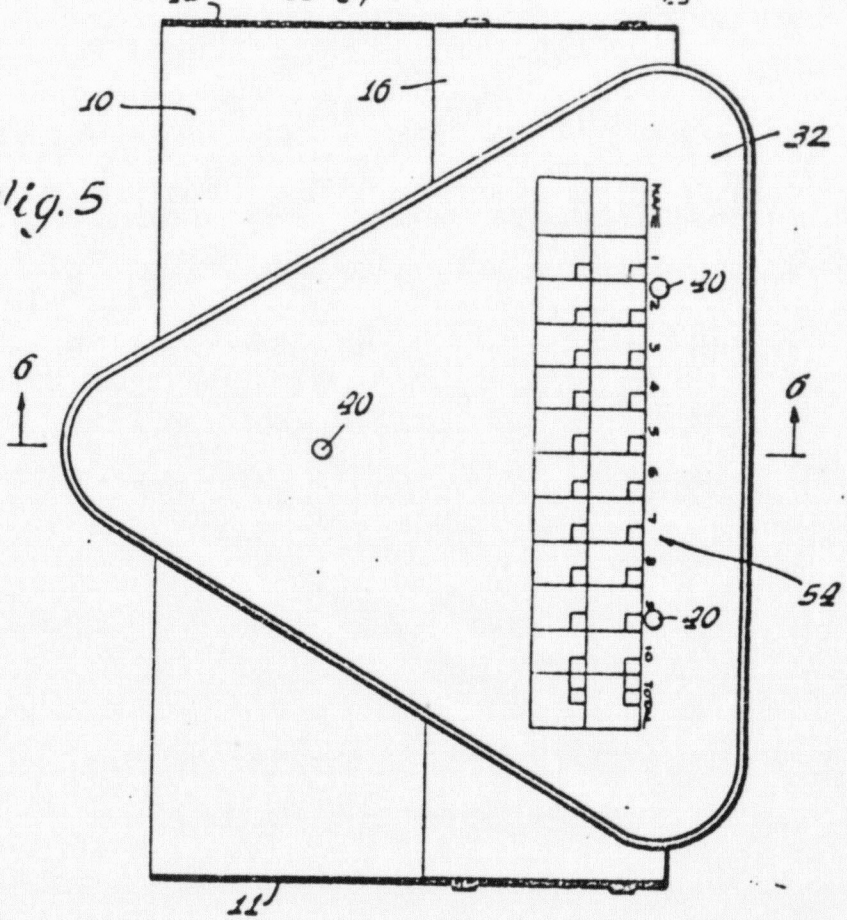


Fig. 5



INVENTOR.
David Cohn

BY

Munn, Liddy, Daniels & Marsh

ATTORNEYS

FOL-90
REV.

ADDRESS ONLY
THE COMMISSIONER OF PATENTS
WASHINGTON 25, D. C.

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

All communications respecting this application should give the serial number, date of filing, and name of the applicant.

PAPER No. 3

Munn, Liddy, Daniels
& March
24 W. 40th St.
New York 18, N. Y.

Applicant: David Cohn	
Ser. No. 768,278	MAILED
Filed October 20, 1958	APR 24
For BOWLING GAME	PAT OFF DIV 62

Please find below a communication from the EXAMINER in charge of this application.

Robert C Watson
Commissioner of Patents.

This application has been examined.

Patents cited to show separate status:

I.	Scheidemantel	2,809,038	Oct. 8, 1957 11	273-82
	Lippert	2,878,021	Mar. 17, 1959 14	273-82
II.	Hartwig	2,327,350	Aug. 24, 1943 6	273-44
	Laferriere	2,361,482	Oct. 31, 1944 8	273-44
III.	Bluford	2,512,516	June 20, 1950 10	273-53
	Zuercher	2,815,954	Dec. 10, 1957 12	273-53

Restriction to one of the following invention is required:

I. Claims 1-3 which recite a bowling pin per se.

II. Claims 4-14 which recite a tethered bowling pin setting mechanism.

III. Claim 15 which recites a bowling alley backstop per se.

Claim 16 is rejected as not in compliance with 35 USC 112, and accordingly is not assigned to any group.

The several inventions are distinct, each from the others, because (1) the claims of Group II do not recite nor does the pin setting mechanism defined therein require either the specific bowling pin as defined in the claims of Group I, or the specific backstop as defined in the claims of Group III, and (2) the bowling pin and backstop have separate utility in other combinations. For example, any bowling pin having a magnet in the base thereof and the backstop of Bluford could be used in the combination defined by the claims of Group II, and the bowling pin and backstop as defined in the claims of Groups I and III could equally well be used in the pinsetter of Laferriere.

Since these distinct inventions have acquired a separate status in the art as shown by the different classifications of the above cited exemplary art, and since the fields of search for the respective inventions are not coextensive, restriction for examination purposes as indicated is proper.

Applicant is advised that his response to be complete must include a provisional election of one of the above identified inventions (see Rule 143), even though he traverses the requirement.

aoo
A.O.OECHSLE:mp

E. E. Fuller
Examiner

OCT 16 1959
U. S. PATENT OFFICE

Paper No. 4

U. S. PATENT OFFICE
OCT 21 1959
DIVISION 62

IN THE UNITED STATES PATENT OFFICE

Applicant : David Cohn

Serial No. : 768,278

Filed : October 20, 1958

For : BOWLING GAME

Pat. Div. 62
4/a + Elec.

Hon. Commissioner of Patents

Washington 25, D. C.

Sir:

In response to the Official Action date-stamped the 24th of April, 1959 kindly enter the following amendment:

Cancel claim 16.

R E M A R K S

In response to the requirement for restriction of the application to one of several allegedly distinct inventions as defined by claims placed in three groups by the Examiner, applicant herewith provisionally elects for prosecution at the present time claims 4-14 constituting the Examiners Group II.

Applicant, however, respectfully requests reconsideration of the requirement for restriction as between the claims of Groups I and II, for the reason that the magnetic-type bowling pins set forth in claims 1-3 would have no utility apart from a base plate or bowling surface of magnetic characteristics as set forth in claims 4-14 of the Examiner's Group II. In the

combination set forth in claim 4, for example, it is necessary for the bowling pin to have a magnetic base portion, in order for the mechanism to be operative and to have utility.

Applicant believes that the claims in group I in effect define merely a sub-combination of the structures set forth by the claims in Group II. Inasmuch as the Group II claims require bowling pins having magnetic bases, the inventions of Groups I and II are believed to be interdependent and to be not distinct or separate. Accordingly, reconsideration of the requirement for restruction as between the claims of Groups I and II is asked on the basis of the foregoing reasons.

The Examiner has not shown that magnetic bowling pins have acquired a separate status in the art, and it is believed that the fields of search for the claims of Groups I and II would clearly be coextensive.

Applicant concurs with the requirement for restriction as between claim 15 placed in Group III and the remainder of the claims in the application.

In view of the foregoing, reconsideration and an action on the merits of claims 1-14 is respectfully requested.

Respectfully submitted,

DAVID COHN
Applicant

BY: MUNN, LIDDY, DANIELS & MARCH
Attorneys for Applicant

per Arthur A. March
Arthur A. March

October 15, 1959

OCT 16 1959
U.S. PATENT OFFICE

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IN THE UNITED STATES PATENT OFFICE

Applicant : David Cohn

Serial No. : 768,278

Filed : October 20, 1958 Pat. Div. 62

For : BOWLING GAME

PETITION TO MAKE SPECIAL

Hon. Commissioner of Patents

Washington 25, D. C.

Sir:

On the accompanying affidavits of DAVID COHN, of Brooklyn, New York, and ARTHUR A. MARCH, of New York, New York, it is respectfully requested that the above entitled application be made "Special" in order that steps may be taken to prevent further infringement.

Respectfully submitted,

MUNN, LIDDY, DANIELS & MARCH
Attorneys for Applicant

By: Arthur A. March
Arthur A. March

October 15, 1959

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OCT 16 1959
U.S. PATENT OFFICE

IN THE UNITED STATES PATENT OFFICE

Applicant : David Cohn

Serial No. : 768,278

Filed : October 20, 1958 Pat. Div. 62

For : BOWLING GAME

A F F I D A V I T

STATE OF New York)
: ss:
COUNTY OF Kings)

I, DAVID COHN, being duly sworn, do hereby depose and say:

That I am the President of T. Cohn, Inc., the owner of the above entitled application covering an invention in a Bowling Game.

That there is presently on the market being sold by another than T. Cohn, Inc. a bowling game which infringes upon the claims in the above entitled application and the invention covered thereby.

That the said infringing bowling game was first discovered to exist on or about September 1st, and that in the interim the facts of the aforesaid infringement have been confirmed.

Daniel Cohen

Subscribed and sworn to before me this 7th day of October, 1959.

Notary Public

ANTHONY SINICROPI
Notary Public, State of New York
No. 24-5024400
Qualified in Kings County
Cert. filed with Kings Co. Register
Term Expires March 30, 1960

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PATENT OFFICE
OCT 16 1959
U.S. PATENT OFFICE

IN THE UNITED STATES PATENT OFFICE

Applicant : David Cohn

Serial No. : 768,278

Filed : October 20, 1958 Pat. Div. 62

For : BOWLING GAME

A F F I D A V I T

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

I, ARTHUR A. MARCH, being duly sworn, do hereby depose and say:

I am a member of the firm of Munn, Liddy, Daniels & March, attorneys of record in the above entitled application which is owned by T. Cohn, Inc.

I have made a rigid and careful comparison of the infringing bowling game presently on the market with the claims in the instant application and in my opinion there is no question but that some of the claims are infringed. The infringing bowling game is referred to in the accompanying affidavit of David Cohn, President of T. Cohn, Inc., and I have read said affidavit.

I have caused to be made and have examined a thorough and careful search of the pertinent prior art and in my opinion all of the claims presently in the application are allowable and patentable over said prior art.

Julius A. March

Subscribed and sworn to before me this 15th day of October, 1959.

Ann Stromaier
Notary Public

ANN STROMAIER
NOTARY PUBLIC, State of New York
No 03-3881075 - Qualified in Bronx Co.
Certificate filed in New York County
Commission Expires March 30, ~~1960~~ 1961

(Notarial Seal)

23

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THE COMMISSIONER OF PATENTS
WASHINGTON 25, D. C.

Report Requested 10/21/59

U. S. DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

Ex parte: David Cohn
Serial No.: 768,278
Division: 62

R. 3722

The examiner will please send the file of this application to Law Examiner, ~~Arthur H. Behrend, Room 0813~~, indicating hereon when the application will be reached for action. If an amendment or other paper is attached, it should be entered before the file is forwarded.

Robert C. Watson
Commissioner

This application will be acted upon June 1, 1960

10/22/59
Date of Report

D B Lowe
Signature of person reporting

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The COMMISSIONER OF PATENTS
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U. S. PATENT OFFICE
COMMISSIONER'S OFFICE

U. S. DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE
WASHINGTON

NOV 23 1959
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November 23, 1959

Ex parte David Cohn
Serial No. 768,278
Filed October 20, 1958
Bowling Game

Petition to Make Special

The petition to make this case special has been considered.

If the examiner can make this case special without prejudice to any possible interfering applications, and he should make a rigid search for such, he is authorized to do so for the next action. Should the application be rejected, the case will not be considered special for the subsequent action unless the applicant promptly makes a bona fide effort to place the case in condition for allowance even if it is necessary to have an interview with the examiner to accomplish this purpose.

If the examiner finds any interfering application for the same subject matter, he should consider such application simultaneously with this case and should state in the official letter of such application that he is taking it out of its turn because of a possible interference.

Should an appeal be taken in this case or should this case become involved in interference, consideration of the appeal and the interference will be expedited by all Patent Office officials concerned, contingent likewise upon diligent prosecution by the applicant.

The petition is granted to the extent indicated.

Arthur W. Crocker
First Assistant Commissioner

Munn, Liddy, Daniels & March
24 W. 40th Street
New York 18, New York

25

PDI-90
Rev.
ADDRESS ONLY
THE COMMISSIONER OF PATENTS
WASHINGTON 25, D. C.

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

All communications respecting this application should give the serial number, date of filing, and name of the applicant.

PAPER NO. 7

Munn, Liddy, Daniels
and March
24 W. 40th St.
New York 18, N. Y.

Applicant: David Cohn	
Ser. No. 768,278	MAILED
Filed October 20, 1958	
For BOWLING GAME	JAN 7 1960

Please find below a communication from the EXAMINER in charge of this application.

Robert C. Watson
Commissioner of Patents.

16—65479-8, GPO

Responsive to amendment filed October 16, 1959.

Additional references:

Jaufroid	1,058,062	Apr. 8, 1918	1	273-2
Cumming	1,291,427	Jan. 14, 1919	2	273-44
White	1,896,383	Feb. 7, 1933	3	273-43(A)
Igou	1,913,673	June 13, 1933	4	273-42
Lloyd	2,217,063	Oct. 8, 1940	5	273-44
Hedenskoog	2,348,540	May 9, 1944	7	273-44
Dicker	2,819,902	Jan. 14, 1958	13	X273-44
Lemon	2,900,188 (Filed Sept. 17, 1956)	Aug. 18, 1959	15	273-102
French patent	571,565 (1 pg. spec. no drwg.)	Feb. 4, 1924	(1)	273-44

Applicant's argument with respect to the restriction requirement between the inventions identified as Group I and Group II has been considered. It is the Examiner's contention that the magnetic bowling pin defined in the claims of Group I has utility apart from its use with a paramagnetic base-

plate. For example, the bowling pin obviously has utility with the plurality of iron pin bed inserts disclosed by Cumming (page 1, lines 88-92). Further, the combination claims of Group II recite the subcombination details more broadly than the subcombination claims of Group I, and hence allege an invention in the combination which is not dependent on the details of the subcombination. In addition, a search for a tethered bowling pin mechanism would not include a search in the bowling pin subclass. The restriction requirement is repeated and made FINAL.

Claims 1-15 are in the case.

Claims 1-3 and 15 stand withdrawn from further consideration by the Examiner, Rule 142(b), as being for a nonelected invention, the requirement having been traversed in Paper No. 4.

Claims 4 and 5 are rejected as unpatentable over Lloyd. To reverse the magnet and metal in the reference would be an obvious expedient and would not be inventive. Whether the elastic is secured to the top or bottom of the pin is not of patentable significance.

Claims 6-8 are rejected as unpatentable over Lloyd in view of Hedenskoog. The latter discloses a guide means 45 and a compression spring mounted between the reset part and guide means. To provide the Lloyd device with said guide means and compression spring would involve only ordinary skill in the art and would not be inventive.

Claim 9 is rejected as unpatentable over the art applied in the rejection of claim 8 in view further of Dicker (Fig. 12). To further employ an eyelet construction in the guide means of Hedenskoog would be obvious in view of Dicker.

Claims 10, 11, 13 and 14 are rejected as unpatentable over Lloyd in view of Hedenskoog and Dicker as applied in the rejection of claim 9. To further employ the inverted U-shaped housing 12 of Hedenskoog with the device of Lloyd would involve mechanical skill only and would not be invention.

Claim 12 is rejected as unpatentable over Lloyd in view of either Jaufroid or Lemon. The auxiliary references show that it is old to employ scoring means which are integrally associated with amusement devices. To associate a scoring means with the device of Lloyd would be obvious in view of the disclosure of either Jaufroid or Lemon.

Igou is cited to show a spring-biased setting mechanism. The French patent discloses a paramagnetic pin bed and pins with magnets in the bases thereof. White discloses a paramagnetic plate in a pinsetting mechanism.

No claim is allowed.

aoo
A.O.OECHSLE/mp

E. E. Fuller
Examiner

MAIL ROOM
APR 27 19
APPLICANT'S UNIT

71

IN THE UNITED STATES PATENT OFFICE U. S. P.

APR 29 1960
DIVISION 62

APPLICANT: DAVID COHN

SERIAL NO.: 768,278

FILED: October 20, 1958 Division (62)

FOR: BOWLING GAME

DOCKET SECTION
RECEIVED
APR 29 1960

Power of Attorney

TO THE COMMISSIONER OF PATENTS:

The undersigned, owner of the above-identified application, hereby revokes all former Powers of Attorney, and appoints Arthur A. March (Reg. No. 17675), Donald P. Gillette (Reg. No. 16781), Theodore C. Virgil (Reg. No. 16242), and Lewis H. Eslinger (Reg. No. 18558) of 125 Park Avenue, New York 17, New York, all members of the firm of March, Gillette, Virgil, & Eslinger, the attorneys for said applicant, with full power of substitution and revocation to prosecute said application, to make alterations and amendments therein, to sign the drawings, to receive the patent, and to transact all business in the Patent Office therewith connected.

Signed at New York, in the County of New York, and State of New York, this 5th day of April, 1960.

PO-53
REV.

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WASHINGTON 25, D. C.

U.S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

All communications respecting this application should give the serial number, date of filing, and name of the applicant.

PAPER No. 9

sr

May 2, 1960

March, Gillette, Virgil & Eslinger
125 Park Avenue
New York 17, N. Y.

Applicant David Cohn
Serial No. 768,278
Filed Oct. 20, 1958
Div. 62

In this application the Commissioner of Patents has accepted the power of attorney for the above named person or firm. The applicant has revoked the power of attorney to the person or firm named below.

C. D. Carter

Head, Docket Branch

Munn, Liddy, Daniels & March
24 West 40th St.,
New York 18, N. Y.

30

IN THE UNITED STATES PATENT OFFICE

DIVISION 62

Pat. Division 62

Applicant : David Cohn

Serial No. : 768,278

Filed : October 20, 1958

For : BOWLING GAME

A M E N D M E N T

Hon. Commissioner of Patents

Washington 25, D.C.

Sir:

In response to the Office Action dated January 7, 1960, please amend the above-entitled application as follows:

In the Claims,

Cancel claims 4, 6 and 8 to 14, both inclusive.

Claim 5, line 1, change the numeral 4 to 17.

Claim 7, line 1, change the numeral 6 to 5.

Add the following new claim:

17. A toy bowling game comprising a flat metal base plate having an extensive upper surface, a spring-urged supporting member mounted for movement relative to said base plate, a bowling pin carried by said supporting member and having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on said

base plate in upright position, an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate, said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the magnet on the bowling pin to contact the metal base plate, said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnet resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position, and said spring-urged supporting member automatically returning and being retained in normal spaced relation above said base plate.

B' cont'd

REMARKS

The Examiner's Action dated January 7, 1960 and the references referred to therein have been carefully considered. Claims 4, 6 and 8 to 14, both inclusive, have been cancelled without prejudice, and new claim 17 has been added. The claims presently in this case are believed to be in proper order and to distinguish patentably over the references of record. Reconsideration and allowance of these claims is respectively requested for the following reasons.

The Examiner has withdrawn claims 1 through 3 and 15 as being directed to a non-elected invention. It is respectfully requested that the Examiner allow these claims to remain in this application so that divisional applications can be filed. This amendment is accordingly directed to claims 5, 7 through 14 and 17.

The Examiner has rejected claim 5 as unpatentable over the patent to Lloyd. This patent relates to a bowling alley in which a plurality of permanent magnets are positioned below the base in order to hold the bowling pins in position. The bottom of each bowling pin has inserted therein a metal which is attracted by the magnets beneath the base. An elastic cord is attached to the base of each bowling pin and extends through the bowling pin in a bore provided therein. The other end of the elastic cord is attached to a bracket which is in turn secured to a locating plate. The locating plate is normally suspended above the base by brackets which support and guide the plate during descent toward the base.

It is to be noted that in the device of Lloyd the elastic cord extends through a central bore in the bowling pin and is attached to the base thereof. When the bowling pin is struck by a ball, it is not free to move in the normal manner of bowling pins since the movement thereof is restricted and impaired by the elastic cord. It is respectfully submitted that claim 5 distinguishes patentably over this reference.

The Examiner has also rejected claims 7 and 8 as unpatentable over the patent to Lloyd in view of the patent to Hedenskoog. The patent to Hedenskoog relates to an automatic bowling alley in which a locking means and not magnetic attraction is used to retain the bowling pin on the base plate. Each bowling pin is mounted upon a rod which is spring biased. When the plate 34 is lowered towards the base, a spring 31 is placed under tension. When the ball strikes a bowling pin, the mechanism holding the pin to the base is released and the spring is compressed, drawing the rod 21 and the pin secured thereto, upwardly to an elevated position above the base.

It is to be noted that the bowling pin of Hedenskoog is not retained magnetically on the base and that the pin is not suspended by means of an elastic cord. The bowling pin is thereby not permitted normal freedom of movement. In addition, it is not the reset part 34 which is spring biased, but rather the rod 21 which is attached to the bowling pin. The spring is not mounted between the reset part 34 and the guide means 45 since it is evident that the reset part 34 is not spring biased with regard to the guide means 45 or the base. It is respectfully submitted that one skilled in the art, having both the Lloyd and Hedenskoog references before him, would not modify the Lloyd device as suggested by the Examiner.

Even if this were done, applicant's device would not be duplicated. It is accordingly submitted that these references neither singly,or in combination, anticipate these claims and their allowance is therefore respectfully requested.

The Examiner has rejected claim 9 on the same basis as claim 8 in view of the patent to Dicker. The patent to Dicker also relates to a bowling game in which the bowling pins are reset by operating levers. The bowling pins are normally suspended below the plate 120 by cords which pass through eyelets 132 in the plate 120 and are connected to a spring 138. When it is desired to reset the pins, the handle 146 is depressed which draws the pins to an upright position. This reference is also not believed to anticipate applicant's invention, whether taken singly or in combination with the other references cited by the Examiner.

The Examiner has rejected claims 10 through 14 as unpatentable over the patent to Lloyd in view of the patents to Hedenskoog and Dicker. The housing 12 of Hedenskoog is merely an enclosure and serves no function in the operation of the bowling alley. It is respectfully submitted that these claims distinguish over the references for the same reasons stated in respect to claim 9.

The Examiner has further rejected claim 12 as unpatentable over the patent to Lloyd in view of the patents to Jaufroid or Lemon. The Jaufroid reference discloses scoring means for billiard tables in which the scoring means include slides which are held in frictional engagement with the edges of the table. The patent to Lemon discloses a scoring device for use with dart boards in which markers are moved to indicate the correct score. These references are believed to have no pertinence to applicant's invention since they are different types of amusement devices and utilize different scoring apparatus than applicant's.

The Examiner has cited the patent to Igou to illustrate a spring bias setting mechanism for use with a pin setting device. This spring device is designed for an automatic bowling alley and is entirely different from applicant's device. The French patent No. 571,565 discloses no more than the other references cited by the Examiner. The patent to White relates to an automatic pin setting machine which operates on an entirely different principle than applicant's device.

The Examiner has also cited, but not applied, the patent to Cumming. This patent relates to a device for setting bowling pins in which a magnet is located under each pin position. The bowling pin is provided with an iron base for attraction by the magnets. This reference is also not believed to anticipate applicant's device.

In summary, the claims remaining in this case are believed to be in proper order and to distinguish patentably over the references of record. These references neither singly or in combination anticipate applicant's invention and even if they were combined in the most advantageous manner they would not anticipate applicant's invention. Thus, new claim 17 specifically calls for a spring-urged supporting member carrying a bowling pin and mounted for movement relative to the base plate and automatically returning and being retained in normal spaced relation above said base plate. In view of this, new claim 17 and dependent claims 5 and 7 are believed to be in condition for allowance and such action is respectfully requested.

Respectfully submitted,

MARCH, GILLETTE, VIRGIL & ESLINGER

By Arthur A. March
Arthur A. March

July 6, 1960

1951-89
Rev.
ADDRESS ONLY
THE COMMISSIONER OF PATENTS
WASHINGTON 25, D. C.

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

All communications respecting this application should give the serial number, date of filing, and name of the applicant.

PAPER No. 11

March, Gillette, Virgil
& Eslinger
125 Park Ave.
New York 17, N. Y.

Applicant: David Cohn	
Ser. No. 768,278	MAILED
Filed October 20, 1953	OCT 26 1960
For BOWLING GAME	PAT OFF
	DIV 62

Please find below a communication from the EXAMINER in charge of this application.

Robert C. Watson
Commissioner of Patents.

Responsive to amendment filed July 7, 1960.

Reference of Interest:

Willard	2,453,610	Nov. 9, 1948	273-37

Claims 1-3, 5, 7, 15 and 17 are in the application.

Claims 1-3 and 15 stand withdrawn from further consideration for reasons of record.

Claims 5, 7 and 17 are rejected as unpatentable over Lloyd in view of Hedenskoog for reasons of record. Claim 17 reads directly on the reference Lloyd with the exception of the recited reversed relationship of the magnet and metal. As broadly as recited, the supporting member 28 is "spring-urged" in its stationary position by springs 27. No patentable consideration is accorded the functional statements in the last seven lines of the claim. In any

event, as broadly as recited, to substitute the spring-urged support 34 of Hedenskoog for that of Lloyd would involve mechanical skill only and would not be inventive. It is noted that the support of Hedenskoog is spring-urged at times by the springs 31 and 53.

Claims 5 and 7 are further rejected as indefinite in that they apparently recite the same structure and function defined in parent claim 17.

Claims 5, 7 and 17 are further rejected as unpatentable over Lloyd in view of Igou. To cause the pin setting support means of Lloyd to be spring biased in upward direction would be obvious in view of Igou.

Willard is cited to show that it is old to integrally associate a bowling device and score keeping indicia.

No claim is allowed.

This action is Final.

aoo
A.O.OECHSLE/mp

E. E. Fuller
Acting Examiner

POWER FOR ASSOCIATE ATTORNEY

#12

IN THE UNITED STATES PATENT OFFICE

In re application of

DAVID COHN

Serial No. : 768,278

Filed : October 20, 1958

For : BOWLING GAME

Pat. Div. : 62

Hon. Commissioner of Patents

Washington 25, D.C.

Sir:

Please recognize Arthur A. March, Registration No. 17675 and James E. Curtiss, Registration No. 13694, whose post-office addresses are 125 Park Avenue, New York 17, New York, individually as associate attorneys for us in the above-entitled application to prosecute the said application, to make alterations and amendments therein, to receive the patent and to transact all business in the Patent Office connected therewith.

Please address all future communications to them.

Respectfully,

MARCH, GILLETTE, VIRGIL & ESLINGER
Attorneys for Applicant

By: Donald L. Gillette

IN THE UNITED STATES PATENT OFFICE

13/C
(N.E.)

Applicant : DAVID COHN

Serial No. : 768,278

Pat. Div. 62

Filed : October 20, 1958

For : BOWLING GAME

Hon. Commissioner of Patents

Washington 25, D. C.

Sir:

In response to the Official Communication of October 26, 1960, please amend the above-identified application as follows:

Claim 17, line 2, delete "spring-urged"; line 3, after the comma insert --spring means normally urging said supporting member away from said base plate-- ; line 19, change "spring-urged" to --spring means urging said-- ; lines 19 and 20, change "returning and being retained" to --return and retain it-- .

Claim 5, line 1, change "in which the" to --wherein-- ; line 3, change "in which there is" to --including--.

Cancel Claim 7.

REMARKS

Claim 7 has been cancelled without prejudice.

Claim 17 has been amended to include as a positive element the spring means normally urging said supporting member away from said base plate. In the patent to Lloyd the only spring means present are the stanchions 27 which exert a pressure laterally against the locater plate to hold it in its raised position. This was recognized by the Examiner whose objection was based on the broad characterization of the supporting member in applicant's device as being "spring-urged". Hence, as Claim 17 is now presented to call for a supporting member mounted for movement relative to the base plate and spring means recited as a positive element for normally urging the supporting member away from the base plate, plus the further characterization of the spring means as acting to urge the supporting member automatically to return and retain it in normal spaced relation above said base plate, it is believed to distinguish from Lloyd both in substance and in language.

As now presented, Claim 17 also is believed to distinguish from Lloyd in view of Hedenskoog. In the latter reference neither of the springs 31, 53 is operative normally to urge the member 34 away from the base plate since the latter is controlled positively by the crank arm 80.

It is also respectfully submitted that Claim 17 distinguishes from Lloyd in view of Igou both in substance and in language. The Igou patent relates to a mechanical pin setting device for a bowling alley wherein the bowling pins are set up upon the alley as free, separate and distinct elements. In applicant's device as called for by the claim the invention deals with a toy bowling game wherein the pins are not elements separate and distinct from the pin setting apparatus but are necessarily attached thereto by an elastic string. Insofar as applicant's invention is concerned, applicant has produced a device which is simpler, less expensive to make, and more closely simulating the action of the free falling pins of the official full scale bowling alley than are any of the game devices of the prior art. It is submitted that applicant's use of springs per se may not be new but even in view of Igou they constitute an unobvious element in applicant's new combination as of the time applicant made his invention. The most that can be said of Igou is that he utilized tension springs for the purpose of counterbalancing the weight of his pin setting frame. Applicant, on the other hand, utilizes compression springs for the purpose of automatically returning the supporting member to its normal position, which is more and different from the mere act of counterbalancing.

The patent to Willard has been noted as a matter of interest but it is believed not to require discussion since it has no application to the claims under consideration.

In view of the foregoing amendments and remarks it is respectfully submitted that Claim 17 patentably distinguishes from the references cited and is allowable thereover. Claim 5, which is dependent upon Claim 17, characterizes the supporting member as comprising a horizontally extending reset part and positively includes means for mounting the reset part on the base for vertical movement with respect thereto. Thus, it adds to Claim 17 specific elements not recited therein but which further define the new combination and therefore Claim 5 should be allowed along with Claim 17 as now presented.

In view of the foregoing amendments and remarks a reconsideration and formal allowance of Claims 17 and 5 is respectfully requested.

Respectfully submitted,

James E. Curtiss
Attorney for Applicant

James E. Curtiss

POL-90
Pat.

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WASHINGTON 25, D. C.

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

All communications respecting this application should give the serial number, date of filing and name of the applicant.

PAPER NO. 14

Arthur A. March &
James E. Curtiss
125 Park Avenue
New York 17, New York

Applicant:
David Cohn
Ser. No.
765,278
Filed
October 20, 1958
For
BOWLING GAME

MAILED
APR 21 1961
PAT OFF

Please find below a communication from the EXAMINER in charge of this application.

DAVID L. LADD

Robert C. Watson
Commissioner of Patents.

The proposed amendment filed April 18, 1961 in response to the final rejection of October 26, 1960 has not been entered because it does not place the case in condition for allowance.

Claims 5 and 17, if amended as proposed, would be considered unpatentable over Lloyd in view of Igou, for reasons of record. With regard to applicant's argument relating to the Igou patent, it is noted that said patent is not relied upon in its entirety, but only for its disclosure of a spring biased pin setting and supporting member. As such, the Igou patent is considered to be properly combined with Lloyd in the rejection of the claims.

The rejection of claims 5, 7 and 17 as unpatentable over Lloyd in view of Hedenskoog is withdrawn.

The proposed amendment will be entered for purposes of appeal if applicant so requests.

The statutory period for response to the final rejection of October 26, 1960 expires April 26, 1961.

AOD
A.O.OSCHISLE/mp

E. G. Fuller
Acting Examiner

DIV. 62 9265
APR 28 1961
U. S. PATENT OFFICE

IN THE UNITED STATES PATENT OFFICE

In re application of	
David Cohn	
For BOWLING GAME	Division 62
Filed October 20, 1958	
Serial No. 768,278	

Hon. Commissioner of Patents
Washington, D. C.

Sir:

In response to the Official Action of April 21, 1961 and as the result of an interview with the Examiner, it is requested that the above-entitled application be further corrected as follows:

In the claims:

Cancel claim 17 and substitute therefor the following claim:

--18. A toy bowling game comprising a flat substantiall rectangular shaped metal base plate of magnetic material having an extensive upper surface, said base plate having upstanding flanges integral with the opposite side edges thereof, an inverted

U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on said base plate, a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame, a supporting member positioned above said guide plate and spaced therefrom, said supporting member being mounted for movement relative to said base plate, spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate, a bowling pin carried by said supporting member and having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on said base plate in upright position, an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate, said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the magnet on the bowling pin to contact the metal base plate, said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnet resisting removal of the pin from the base plate by said string when said supporting member is returned to its original

position, and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.--.

Claim 5:

Line 1, change "17" to --18--;

Line 2, change "comprises" to --has--; after "part" insert --mounted thereon--;

Line 3, change last "the" to --said supporting member--;

Line 4, cancel "base"; change "thereto" to --to said base--.

R E M A R K S

Claim 17 has been amended to more specifically define applicant's invention and is now being presented as claim 18 for the consideration of the Examiner. The new claim specifically defines and refers to sub-plate 39 as the supporting member, for it is to this member that the strings are connected and it is this member that the springs engage to urge the sub-plate away from the base. There is no action similar to this in Floyd, nor does this patent show the guide plate now added to the claim, regardless of the showing of the springs in Igou, such springs do not operate in the same manner as does the springs of applicant. The springs in the patent pull up, in applicant's claims the springs push up. The Examiner appeared to be in favor of allowing claim 18 since it has defined allowable subject matter over Lloyd, plus Igou or Lloyd or Igou alone.

Claim 5 was amended to define the reset plate 32 mounted on the sub-plate 39 and this structure is not shown or suggested

in either of the patents relied on by the Examiner. The Examiner also admits that the claim avoids the applied art.

It is believed, therefore, that corrected in accordance with the thoughts of the Examiner, as the result of the interview, claim 18 and claim 5, dependent thereon, are allowable and favorable action, plus an early allowance date are believed to be in order and are solicited.

Respectfully submitted,

James E. Curtiss
Attorney for Applicant

BOARD OF
APR 28 1961
PATENT OFFICE

IN THE UNITED STATES PATENT OFFICE

Application of

David Cohn

Serial Number 768,278

Filed October 20, 1958

For Bowling Game Division 62

Hon. Commissioner of Patents
Washington, D. C.

APPEAL TO BOARD OF APPEALS

Sir:

Appeal is taken from the Final Rejection dated October 26, 1960 in the above application.

It is requested that the amendment filed of even date be entered for purposes of this appeal.

The appeal fee of $25. is attached.

Respectfully submitted,

Attorneys for Applicant.

April 26, 1961

PATENT OFFICE

17/6
(E.)

IN THE UNITED STATES PATENT OFFICE

In re application of	:	
David Cohn	:	
For BOWLING GAME	:	Division (62)
Filed October 20, 1958	:	
Serial No. 768,278	:	

Hon. Commissioner of Patents

Washington, D. C.

Sir:

Supplemental to the filing of the amendment of April 26, 1961 and as the result of an interview with the Examiner, it is requested that the above-entitled application be further corrected as follows:

Cancel claims 1-3 and 15.

Add the following claim:

--~~15~~ 4. A toy bowling game comprising a flat substantially rectangular shaped metal base plate having an extensive upper surface, said base plate having upstanding flanges integral with the opposite side edges thereof, an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with said flanges and secured to said base plate, a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame, a supporting member positioned above said guide plate and spaced therefrom, said supporting member being mounted

for movement relative to said base plate, spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate, a bowling pin carried by said supporting member, magnetic means for attracting the pin to the base plate to enable the pin to be supported on said base plate in upright position, an elastic string secured to the bowling pin and to said supporting member to positio the bowling pin whereby the latter is lowered at a predetermined location on said base plate, said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the base of the bowling pin to contact the metal base plate, said pin being support ed thereby in upright position on said base plate when said support ing member is depressed toward said base plate and said magnetic means resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position, and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.

E 1 (cont'd)

REMARKS

A t the interview with the Examiner the new claim, now added, was discussed and it was the opinion of the Examiner that, to prevent any chance of double patenting, the specific structure of the pin should be omitted from the new claim. The new claim

is of similar scope to claim 18, which the Examiner has already accepted as being allowable and it is believed, therefore, that the new claim can also receive favorable action which action, plus an early allowance date is believed to be in order and is solicited

Respectfully submitted,

James E. Curtiss

JAMES E. CURTISS
Attorney for Applicant

FORM PO-98
(10-80)

97

Paper No.: 18 9270

Serial No.: 768,278

REFERENCES CITED

The following references are of record in the patented file of this patent:

UNITED STATES PATENTS

Name	Number	Date
Jaaf'roid	1,058,062	Apr. 8, 1918
Cummin[illegible]	1,291,427	Jan. 14, 1919
White	1,896,383	Feb. 7, 1933
Igou	1,913,073	June 13, 1933
Lloyd	2,217,063	Oct. 8, 1940
Hartwig	2,327,350	Aug. 24, 1943
Hedenskoog	2,348,540	May 9, 1944
Laferriere	2,361,482	Oct. 31, 1944
Willard	2,453,610	Nov. 9, 1948
Bluford	2,512,516	June 20, 1950
Scheidemantel	2,809,038	Oct. 8, 1957
Zuercher	2,815,954	Dec. 10, 1957
Dicker	2,819,902	Jan. 14, 1958
Lippert	2,878,021	Mar. 17, 1959
Lemon	2,900,188	Aug. 18, 1959

FOREIGN PATENTS

Country	Number	Date
France	571,505	Feb. 4, 1924

OTHER REFERENCES

POL 85B
8-26-58

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WASHINGTON 25, D. C.

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
WASHINGTON

All communications respecting this application should give the serial number, date of filing, and name of the applicant.

NOTICE OF ALLOWANCE

The application for patent identified below has been examined and found allowable for issuance of Letters Patent.

	FILING DATE	SERIAL NO.	NO. OF CLAIMS ALLOWED	EXAMINER	DIV.
	10/20/58	768278	4	E. Fuller	62
APPLICANT	Cohn, David, Brooklyn, N. Y.			MAILED June 20, 1961	
ASSIGNEE					
TITLE OF INVENTION	Bowling game			CLASS-SUB 273/044 ∴	

With the allowance of the application the final fee becomes due. This fee is thirty dollars ($30) plus one dollar ($1) for each claim allowed in excess of twenty (20) and must be paid within 6 months from the date of this notice. Failure to remit the final fee will result in the patent being withheld from issue.

As a convenience in remitting this fee, use of the enclosed Form POL-85a is suggested. The final fee will not be received from anyone other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office. If no entry appears in the space labeled "assignee," above, a form is enclosed relating to the address of the inventor(s) which requires your attention.

If it is desired to have the patent issued to an assignee or assignees, an assignment, together with the fee for recording the same, must be filed in this Office on or before the date of payment of the final fee.

The patent will be issued and forwarded within approximately two months after receipt of the final fee.

By direction of the Commissioner.

March, Gillette, et al
125 Park Ave.
New York 17, N. Y.

8-20-58

U. S. Department of Commerce
Patent Office

FINAL FEE TRANSMITTAL

This form is provided for convenience in transmitting final fees to the Patent Office. When properly completed it may be used in lieu of a formal transmittal letter. Respondents will note, and fill in items numbered 1 thru 6 below. The Final Fee Receipt, in all cases, will be mailed to the address appearing in box at lower left of this form. If desired, use the reverse side of your Notice of Allowance for carbon copy when completing this form.

1. The COMMISSIONER OF PATENTS is requested to apply the accompanying fee to the case identified below, and deliver the patent as indicated.

MAIL ROOM JUN 5 1961 PATENT OFFICE

Dec 4, 1961
Date

Arthur G. Connolly
Attorney, Agent or Applicant

NOTE—Final fees will not be received from other than the applicant, his assignee, or attorney, or a party in interest as shown by the records of the Patent Office. Final fees will not be applied to pending applications.

	FILING DATE	SERIAL NO.	NO. OF CLAIMS ALLOWED	EXAMINER	DIV.
	10/20/58	768278	4	E. Fuller	62
APPLICANT	Cohn, David, Brooklyn, N. Y.				
ASSIGNEE				MAILED June 20, 1961	
TITLE OF INVENTION	Bowling game			NOTICE OF ALLOWANCE DATE	
				CLASS-SUB	
				273/44	

2. DEFERMENT: (Indicate below if desired)

3. FEE ENCLOSED

$30

4. Assignee: (If assigned and name does not appear in the corresponding space above)

DEC-11-61 72938 BACK --- 115 30.00

MAILING INSTRUCTIONS

Note—The office will send the patent to the address entered in stub at left below unless you direct otherwise. Use the space provided to indicate any changes which affect the delivery of the patent.

5. Do not send the patent to the addressee listed below. Send patent to (check one)

- [ ] Patentee
- [ ] Assignee
- [ ] Associate Attorney (See specific authorization in file)
- [ ] Change of address—Attorney

The address of the person checked above is typed in Item 6 below.

6. Marsh, Gillette, et al
125 Park Ave.
New York 17, N. Y.

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EXHIBIT B

DEFENDANT'S REQUEST FOR ADMISSIONS

PLAINTIFF'S RESPONSE TO REQUEST FOR ADMISSIONS

1. Freeman United States Patent No. 3,866,691 is directed to the BOWL-A-MATIC bowling game manufactured by Defendant which is alleged by Plaintiff to infringe Cohn United States Patent No. 3,019,020.

1. Plaintiff admits that the BOWL-A-MATIC bowling game manufactured by Defendant is alleged by Plaintiff to infringe Cohn United States Patent No. 3,019,020, and admits that Freeman United States Patent No. 3,866,691 appears to be directed to a game which is similar to the BOWL-A-MATIC game, but would point out that the Freeman Patent is not directly relevant, whereas the Assembly Instructions (GUIDE NO. 48350A) packed with the game bought by Plaintiff are. The latter are also more readily comprehensible.

2. The drawings of Freeman Patent No. 3,866,691 substantially illustrate, and the specification of said patent substantially describes, the bowling game which Plaintiff charged to infringe Cohn Patent No. 3,019,020 by letter of his attorney, Arthur A. March, dated November 15, 1973.

2. Plaintiff denies that Plaintiff charged the BOWL-A-MATIC bowling game to infringe Cohn Patent No. 3,019,020 by letter of his attorney, Arthur A. March, dated November 15, 1973, and admits that the drawings of Freeman Patent No. 3,866,691 substantially illustrate, and the specification of said patent substantially describes, the BOWL-A-MATIC bowling game.

3. The drawings and specification of Freeman Patent No. 3,866,691 substantially illustrate and describe the bowling game offered for sale by Defendant in 1975 (which has been marked as Defendant's Exhibit H), except as follows:

a. the bowling game as offered for sale has eyelets in place of the pulleys 54 shown in Freeman Patent No. 3,866,691;

b. some bowling pins in the game offered for sale have holes in the bases thereof whereas the pins illustrated in Freeman Patent No. 3,866,691 do not;

c. the game marked Defendant's Exhibit H has a transparent plastic window at the rear thereof whereas that shown in Freeman Patent No. 3,866,691 and that in the possession of Plaintiff's counsel do not.

3. Plaintiff admits that the drawings and specification of Freeman Patent No. 3,866,691 substantially illustrate and describe the bowling game offered for sale by Defendant in 1975. Plaintiff admits that the assembled game structure which has been marked as Defendant's Exhibit H is similar to that bowling game offered for sale, except as follows:

a. that it is assembled and the bowling game as offered for sale has an eyelet in place of the pulley 54 shown in Freeman Patent No. 3,866,691;

b. some bowling pins in the game offered for sale have holes in the bases thereof whereas the pins illustrated in Freeman Patent No. 3,866,691 do not;

c. the game marked Defendant's Exhibit H has a transparent plastic window at the rear thereof whereas that shown in Freeman Patent No. 3,866,691 and that in the possession of Plaintiff's counsel do not.

4. Plaintiff has charged the game of Defendant's Exhibit H to infringe Cohn Patent 3,019,020.

4. Plaintiff admits that in this suit he has charged the Defendant's BOWL-A-MATIC bowling game which is substantially like Defendant's Exhibit H to infringe Cohn Patent 3,019,020.

5. Plaintiff is the President and major stockholder of T. Cohn, Inc. a corporation located in Brooklyn, New York, which made bowling games substantially as illustrated and described in Cohn United States Patent 3,019,020. Neither Plaintiff nor said corporation has made and sold such bowling games since approximately 1963, and Plaintiff has not licensed the manufacture of the games of the Cohn Patent to any other persons or companies.

5. Plaintiff admits that he is the President and large stockholder of T. Cohn, Inc., a corporation located in Brooklyn, New York, which made bowling games substantially as illustrated and described in Cohn United States Patent 3,019,020. Plaintiff admits that neither Plaintiff nor said corporation has made and sold such bowling games since approximately 1963; and Plaintiff has not licensed the manufacture of the games of the Cohn Patent to any other persons or companies, but did offer a license to the Defendant.

6. At the time of the alleged invention of the bowling game of Cohn Patent 3,019,020, Plaintiff was aware of other bowling games which had been made and offered for sale.

6. Plaintiff admits that at the time of the invention of the bowling game of Cohn Patent 3,019,020, Plaintiff was aware of some other bowling games which had been made and offered for sale.

7. At the time of the filing of the application which matured into Cohn United States Patent 3,019,020, Plaintiff had caused his attorney to make a search for prior patents directed to bowling games which developed a number of earlier patents directed thereto.

7. Plaintiff cannot truthfully admit or deny the matter set forth in Request No. 7 for the reason that after reasonable inquiry the information known or readily obtainable by him is insufficient to enable him to admit or deny.

8. Plaintiff and his attorney did not disclose such earlier patents to the United States Patent Examiner handling the Cohn Application Serial No. 768,278, filed October 20, 1958, which matured into Cohn United States Patent No. 3,019,020.

8. Plaintiff cannot truthfully admit or deny the matter of Request No. 8 for the reason given in response to Request No. 7.

9. The Patent Office Examiner handling said Cohn Application did not cite against said application all of said earlier patents developed by the search.

9. Plaintiff cannot truthfully admit or deny the matter of Request No. 9 for the reason given in response to Request No. 7.

10. Defendant's Exhibit B is an accurate file history of the application which matured into Cohn United States Patent 3,019,020.

10. Plaintiff denies the truth of the matter set forth in Request No. 10.

11. As originally submitted, Plaintiff's application for patent included claims directed to various aspects of a toy bowling game as follows:

a. Claims 1-3, a bowling pin

b. Claims 4-15, a bowling game assembly

c. an omnibus claim directed to "The invention as illustrated and described".

11. Plaintiff admits the truth of the matters set forth in this request.

12. Of Claims 4-15 of the application as filed, Claims 4 and 15 were independent claims and Claims 5-14 were claims dependent directly or indirectly upon Claim 4.

12. Plaintiff admits the truth of the matters set forth in this request.

13. T. Cohn, Inc. sold toy bowling games substantially as illustrated in Cohn Patent No. 3,019,020 from approximately 1958 through approximately 1963.

13. Plaintiff admits the truth of the matters set forth in this request.

14. T. Cohn, Inc. sold at least 100,000 units of said toy bowling game at a price of between $5 and $10 each.

14. Plaintiff admits that to the best of his recollection T. Cohn, Inc. sold a total of at least 100,000 units of said toy bowling game, but the selling price of between $5 and $10 each was the approximate retail price range.

15. Claims 1 and 4 of Cohn Patent No. 3,019,020 comprise the independent claims thereof.

15. Plaintiff admits the truth of the matters set forth in this request.

16. Claim 1 of said patent claims a toy bowling game which includes, inter alia, the following structural elements:

a. a flat substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface;

b. upstanding flanges integral with the opposite side edges of the base plate;

c. an inverted U-shaped frame extending over the base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on the base plate;

d. a substantially triangular shaped guide plate having relatively spaced openings therein mounted on the U-shaped frame;

e. a supporting member positioned above the guide plate spaced therefrom and mounted for movement relative to the base plate;

f. spring means positioned intermediate the guide plate and supporting member for normally urging the supporting member away from the base plate;

g. a bowling pin carried by the supporting member;

h. an elastic string secured to the bowling pin and the support member.

16. Plaintiff admits the truth of the matters set forth in this request.

17. As described and illustrated in the specification and drawings of said Cohn patent:

a. the base plate comprises at least a portion of the game playing surface;

b. the guide plate is fixedly mounted on the upper surface of an inverted U-shaped frame;

c. the supporting member is mounted above the guide plate for vertical movement relative thereto;

d. the spring means comprises a plurality of vertically extending compression springs disposed intermediate and abutting the guide plate and supporting member;

e. the bowling pins are carried by vertically extending elastic strings, one end of each string being secured to the upper end of a bowling pin with the other end of each string being secured to the supporting member.

17. Plaintiff admits that one embodiment of his invention described and illustrated in the Cohn Patent comprises the elements a. to e. of Request No. 17.

18. The toy bowling game offered for sale by Defendant which is charged by Plaintiff to infringe said Cohn patent does not have structural elements which are literally:

a. a flat substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface;

b. upstanding flanges which are integral with the opposite side edges of such a base plate;

c. an inverted U-shaped frame having the lower opposite edges thereof secured to flanges on such a base plate;

d. a supporting member positioned above a triangular shaped guide plate mounted on such a U-shaped frame, the supporting member being spaced from such a guide plate and mounted for movement relative to the base plate;

e. spring means positioned intermediate such a guide plate and supporting member for normally urging the supporting member away from a base plate;

f. an elastic string secured to a bowling pin and such a supporting member.

18. Plaintiff denies the truth of the matter set forth in this request.

19. Claim 4 of said Cohn patent claims a toy bowling game which includes, inter alia, the following structural elements:

a. a flat substantially rectangular shaped metal base plate having an extensive upper surface;

b. an inverted U-shaped frame extending over the base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with the flanges and secured to the base plate.

19. Plaintiff admits the truth of the matter set forth in this request.

20. The toy bowling game offered by sale by Defendant which is charged by Plaintiff to infringe said Cohn patent does not have structural elements which are literally:

a. a flat substantially rectangular shaped metal base plate having an extensive upper surface; and

b. an inverted U-shaped frame extending over such a base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with the flanges and secured to the base plate.

20. Plaintiff denies the truth of the matter set forth in this request.

21. Any element of the toy bowling game offered for sale by Defendant which is disposed above the triangular support or guide plate thereof except for the cords secured to the bowling pins is stationary.

21. Plaintiff denies the truth of the matter set forth in this request.

22. The spring means of the Cohn patent comprise a plurality of compression springs, i.e., springs which resist forces tending to compress the springs.

22. Plaintiff denies the truth of the matter set forth in this request.

23. All springs in Defendant's toy bowling game are tension springs, i.e., springs which resist forces tending to expand or stretch the springs.

23. Plaintiff denies the truth of the matter set forth in this request.

24. The springs 20 of Igou United States Patent No. 1,913,673, cited during prosecution of the Cohn application, are tension springs.

24. Plaintiff admits that the springs 20 of Igou United States Patent No. 1, 913,673 appear to be tension springs.

25. In the Cohn patent application as filed, Claims 4 and 15 were the independent claims directed toward a toy bowling game per se.

25. Plaintiff admits the truth of the matter set forth in this request.

26. Claim 4 as filed was rejected in a Patent Office action dated January 7, 1960 as unpatentable over Lloyd United States Patent No. 2,217,063.

26. Plaintiff admits the truth of the matters set forth in this request.

27. Claims 5-14 of said patent application, dependent on Claim 4, were also rejected in the January 7, 1960 Office Action on the basis of unpatentability over various combinations of said Lloyd Patent, Hedenskoog United States Patent No. 2,348,540, Dicker United States Patent No. 2,819,902, Jaufroid United States Patent No. 1,058,062, and Lemon United States Patent No. 2,900,188.

27. Plaintiff denies the truth of the matters set forth in this request with respect to claim 5, but admits the truth of the rest of the matters in the request.

28. Claim 4 of the Cohn application as filed claimed a toy bowling game comprising, inter alia:

a. a flat metal base of magnetic material;

b. a supporting member secured to the base and extending over the latter in spaced relation thereto;

c. a bowling pin having a permanent magnet with north and south poles disposed at its base; and

d. an elastic string secured to the tip of the bowling pin and to the supporting member.

28. Plaintiff admits the truth of the matters set forth in this request.

29. Lloyd Patent 2,217,063 describes a toy bowling game which has, inter alia:

a. a flat base having magnets mounted adjacent the under surface thereof;

b. a supporting member (28) secured to the base and extending over the latter in spaced relation thereto;

c. a bowling pin having a metallic element in the base thereof; and

d. an elastic string secured to the base of a bowling pin and to the supporting member (28).

29. Plaintiff denies the truth of the matters set forth in this request.

30. With reference to Requests 28-29 and paragraphs a, b, d thereof, in the Office Action, the Examiner did not consider the reversal of the magnet and metallic element, and securing the elastic to the top rather than to the bottom of the bowling pin, to be inventive and of patentable significance.

30. Plaintiff admits the truth of the matters set forth in this request.

31. In response to said Office Action, Claim 4 was cancelled and new Claim 17 substituted therefor by Plaintiff's attorney, the following limitations being added to Claim 4 to distinguish it and the claims dependent thereon over the prior art cited thereagainst:

a. the supporting member was further defined as spring-urged and mounted for movement relative to said base plate;

b. the bowling pin was further defined as being carried by the supporting member;

c. the bowling pin was further defined as being supported in upright position on the base plate when the supporting member is depressed toward the base plate, the magnet resisting removal of the pin from the base plate when the supporting member is returned to its original position; and

d. the supporting member was further defined as automatically returning and being retained in normal spaced relation above the base plate.

31. Plaintiff admits that claim 17 generally contained amendments indicated as a. to d. of Request No. 31.

32. Claim 17 of the Cohn application was finally rejected in a Patent Office action dated October 26, 1960 on the basis of unpatentability over the Lloyd patent in combination with either of said Hedenskoog or said Igou patents.

32. Plaintiff admits that claim 17 was rejected in the Patent Office Action of October 26, 1960, which action was stated to be "Final."

33. The Examiner did not consider the functional statements in the last seven lines of Claim 17 (corresponding to paragraphs (c) and (d) of Request 31 hereinabove) to provide patentable significance.

33. Plaintiff admits the truth of the matters set forth in this request.

34. The Lloyd Patent describes a toy bowling game which has, inter alia:

a. a supporting member (28) which is spring-urged by stanchions (27) formed preferably of spring steel, this supporting member being mounted for movement relative to the base of the toy; and

b. bowling pins carried by such a support member.

34. Plaintiff denies the truth of the matters set forth in this request.

35. The Igou Patent describes a bowling device having, inter alia:

a. a pin holder (17) or supporting member which is spring urged by springs (20); and

b. mounted for movement relative to an alley (1) or base.

35. Plaintiff admits that the Igou patent describes a pin setting device having inter alia

a. "pin holder or template (17)," which is "counterweighted by springs (20);" and

b. mounted for movement relative to an alley (1).

36. In response to the Office Action dated October 26, 1960, an amendment to Claim 17 was proposed by Plaintiff's attorney to distinguish the claims over the references cited thereagainst. This amendment added as a positive element "spring means normally urging said supporting member away from said base plate".

36. Plaintiff admits the truth of the matters in this request.

37. In an Office Action dated April 21, 1961, this proposed amendment (set forth in Request 36) to Claim 17 was not entered since the Examiner indicated, if amended as proposed, it would have been considered unpatentable over the Lloyd patent in view of the Igou patent.

37. Plaintiff admits the truth of the matters in this request.

38. Following an interview between Plaintiff's attorney and the Examiner, Claim 17 was cancelled and Claim 18, identical to Patent Claim 1, was substituted therefor.

38. Plaintiff admits the truth of the matters in this request.

39. Claim 18 added the following limitations not present in Claim 17:

a. the base plate was defined as having upstanding flanges integral with the opposite side edges thereof;

b. an inverted U-shaped frame was added which was defined as extending over the base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on the base plate;

c. a substantially triangular shaped guide plate was added which was defined as having relatively spaced openings therein and being mounted on the U-shaped frame;

d. the supporting member was defined as being positioned above the guide plate and spaced therefrom; and

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e. the spring means was further defined as being positioned intermediate the guide plate and supporting member for normally urging the supporting member from the base plate.

39. Plaintiff admits that claim 18 amended claim 17 by, inter alia, a. to e. of Request 39.

40. Following another interview between the Examiner and Plaintiff's attorney, Claim 19, identical to Patent Claim 4. was added to the pending application.

40. Plaintiff admits the truth of the matters in this request.

41. Plaintiff's attorneys were acting under a power of attorney during the pendency of said patent application which empowered them to represent Plaintiff before the Patent Office.

41. Plaintiff admits the truth of the matters in this request.

42. Plaintiff's attorney argued the inapplicability of said Igou patent as prior art on the basis that, inter alia, the springs of Igou are tension springs whereas those of Plaintiff's device are compression springs.

42. Plaintiff denies the truth of the matters in this request.

43. Plaintiff is estopped, under the doctrine of file wrapper estoppel, to now assert a scope for the claims of the Cohn patent which would not include the structural limitations added to the claims in an effort to obtain allowance thereof by the United States Patent Office.

43. Plaintiff denies the truth of the matters in this request.

44. Each of the limitations added to the claims of the Cohn application during the prosecution before the United States Patent Office in an effort to distinguish the claims of the Cohn application over the prior art constitutes a material limitation.

44. Plaintiff denies the truth of the matters in this request.

45. The claims of the Cohn application were narrowed in scope during prosecution of the Cohn application before the United States Patent Office in an effort to obtain allowance thereof over the prior art.

45. Plaintiff denies the truth of the matters in this request.

EXHIBIT C

DEFENDANT'S INTERROGORATORIES TO PLAINTIFF

PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGORATORIES

Defendant requests that Plaintiff answer under oath the following interrogatories in accordance with Rule 33 of the Federal Rules of Civil Procedure:

It is stipulated by Defendant for purposes of these interrogatories that identification of documents or facts concerning consultation with counsel, or of documents claimed to be immune from discovery under the attorney-client privilege or the doctrine of attorney work product, does not waive Plaintiff's privilege of immunity from discovery.

As used herein, the term "document" is used in its customary broad sense and includes, without limitation, the following items, whether printed, recorded or reproduced by any mechanical process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, namely: agreements; communications, including intracompany communications; correspondence; telegrams; memoranda; summaries or records of telephone conversations; summaries or records of personal conversations or interviews; diaries; forecasts; statistical statements; graphs; laboratory and engineering reports and notebooks; charts; plans; drawings; minutes or records of meetings; minutes or records of conferences; list of persons attending meetings or conferences; expressions or statements of policies; reports or summaries of investigations; opinions or reports of consultants; patent appraisals; opinions of counsel; records; reports or summaries of negotiations; brochures; pamphlets; advertisements; sales literature and circulars; trade letters; press releases; drafts of any documents; original or preliminary notes; and marginal comments appearing on any document.

EXHIBIT C

Identification of all documents should be with sufficient particularity for purposes of a motion to produce each such document and

These interrogatories shall be deemed to seek answers as of the date hereof and shall be deemed to be continuing, and any additional information relating to these interrogatories which plaintiff acquires or which becomes known to plaintiff to and including the time of trial shall be furnished to defendant promptly after such information is acquired by or becomes known to plaintiff or its attorneys.

DAVID COHN answers Defendant's Interrogatories to Plaintiff as follows:

Although Plaintiff may identify documents or dates of consultation with or action by counsel, he does not thereby waive his claim of privilege or immunity from discovery under the attorney work product exemption as to the documents or events.

INTERROGATORY NO. 1. Identify the persons who were engaged in the design and manufacture of the bowling game which is the subject matter of Cohn Patent No. 3,019,020 and set forth with respect thereto their present addresses and their job descriptions, if any, when associated with plaintiff or with any company owned or controlled by plaintiff.

Answer to Interrogatory No. 1:

Plaintiff, David Cohn, was the individual who designed the bowling game which is the subject matter of U.S. Patent No. 3,019,020, which was granted to him. Plaintiff resides at 715 Park Avenue, New York, NY 10021.

As the President and General Manager of T. Cohn, Inc., Plaintiff directed and managed the manufacturing of that bowling game. In view of the small size of T. Cohn, Inc., there was only one Supervisor of Production between Plaintiff and the line workers in the factory, who was Kurt Rebmann, presently residing at 8417 12th Avenue, Brooklyn, New York.

INTERROGATORY NO. 2. As to the bowling game of Cohn Patent No. 3,019,020:

a. when did plaintiff first design said game;

b. identify those persons who assisted plaintiff in the design and construction of a prototype and describe their acts in furtherand thereof;

c. when did plaintiff first construct a model or working prototype of the bowling game;

d. by whom was such model constructed and where;

e. were any photographs made of such model and if so, identify the person having possession thereof;

f. are there any engineering drawings or prints relating to such model or prototype and if so, identify such drawings or prints and the custodian thereof.

Answer to Interrogatory No. 2:

As to the bowling game of Cohn Patent No. 3,019,020:

(a) Plaintiff first designed said game in 1958.

(b) No one assisted plaintiff in the design and construction of a prototype.

(c) Plaintiff first constructed a model or working prototype of the bowling game in 1958 prior to the filing date of the patent application.

(d) Such model was constructed by the Plaintiff at his home at the time: 123 Coleridge Street, Brooklyn, New York.

(e) No photographs were made of such model.

(f) There were no formal engineering drawings or prints relating to such model or prototype. However, the drawings in the application as filed were based on the prototype.

INTERROGATORY NO. 3. As to the bowling games commercially made by plaintiff, or any company affiliated with plaintiff, and sold:

a. identify the engineering drawings thereof and the custodian thereof;

b. identify the person having custody or control of a specimen thereof;

c. when the bowling game was first offered for sale and to whom;

d. by whom the bowling game was offered for sale.

Answer to Interrogatory No. 3:

As to the bowling games of the Cohn Patent No. 3,019,020 commercially made by plaintiff, or any company affiliated with plaintiff, and sold:

(a) Copies of the drawings from the application which resulted in Cohn Patent No. 3,019,020 were used as informal engineering drawings. No records of T. Cohn, Inc. are available for the reasons set forth in the Answer to Interrogatory No. 4.

(b) Copies are contained in any copy of Cohn Patent No. 3,019,020.

(c) On information and belief, the bowling game was first offered for sale sometime after October 1958 or early 1959. The name of the first customer for the game cannot be recalled, but it was offered to all toy distributors.

(d) The bowling game was offered for sale by T. Cohn, Inc.

INTERROGATORY NO. 4. Identify all promotional materials including catalogs, artist's renditions, photographs, brochures, advertisements and flyers prepared by plaintiff or any company affiliated with plaintiff and related to the bowling games of said Cohn patent by:

a. the date of layout or preparation thereof;

b. the date of printing thereof;

c. the date of first distribution thereof;

d. the number of copies printed;

e. the custodian of the copies thereof.

Answer to Interrogatory No. 4:

As to all promotional material prepared by plaintiff or any company affiliated with plaintiff and related to the bowling games of said Cohn patent, the Plaintiff cannot recall any dates or number of copies printed. As to the copies thereof, the records, books, papers, and other documents of T. Cohn, Inc., were taken by the factor along with the assets in satisfaction of its lien. The factor was AIC Financial Corp., whose last known address was 529 Fifth Avenue, New York, New York.

INTERROGATORY NO. 5. Has plaintiff sued any company or persons for, or charged any other company or persons with, infringement of Cohn Patent 3,019,020?

Answer to Interrogatory No. 5:

No, other than Coleco Industries, Inc. in this suit.

INTERROGATORY NO. 6. If the answer to Interrogatory No. 5 is in the affirmative, state:

a. when such suit was brought, the court in which it was brought, the docket number of the action, the defendant(s) and the disposition of the action.

b. with respect to any such charge of infringement, identify the date thereof, the company or persons charged with infringement and any action taken with respect thereto.

Answer to Interrogatory No. 6:

Answer to Interrogatory No. 5 is in the negative.

INTERROGATORY NO. 7. When did plaintiff first inspect a bowling game made and sold by defendant and identify the model thereof, the source from which obtained, the date on which obtained and the person who effected assembly thereof.

Answer to Interrogatory No. 7:

In about early November 1973 Plaintiff became aware that COLECO was manufacturing and selling the BOWL-A-MATIC 300 bowling game. Plaintiff saw the illustrated carton of the game and purchased a BOWL-A-MATIC 300 game by COLECO from Alexander's Department Store. Plaintiff asked the woman in charge of the floor to identify the purchase on the back of the sales receipt and sign her name. She wrote, "Coleco BOWL-A-MATIC 300" and signed her name, "O. Buchholtz." The original receipt cannot be found and a copy of both sides of the only copy of the original is Defendant's Exhibit "C." The date cannot be ascertained on either copy. The Plaintiff subsequently looked at the parts and instructions for the BOWL-A-MATIC 300 bowling game prior to filing suit. The Plaintiff effected assembly of the BOWL-A-MATIC 300 bowling game in late 1975 in consultation with his attorney in preparation for this suit.

INTERROGATORY NO. 8. Identify any foreign patent applications filed by plaintiff corresponding to the application which matured into Cohn Patent 3,019,020 by information including:

a. country;

b. serial number and filing date;

c. patent number, if any.

Answer to Interrogatory No. 8:

None.

INTERROGATORY NO. 9. With respect to any patent application identified in response to Interrogatory No. 8, identify any and all prior art cited thereagainst.

Answer to Interrogatory No. 9:

None.

INTERROGATORY NO. 10. Identify all patents and publications known to plaintiff relating to bowling games of the type having devices for resetting the bowling pins.

Answer to Interrogatory No. 10:

On information and belief, other than the Cohn Patent in suit the patents and publications known to plaintiff relating to bowling games of the type having devices for resetting the bowling pins are the bowling games of that type which are cited against the Cohn patent; Coleco U.S. Patent No. 3,866,691; those patents of the type cited against it; those of the type brought to the attention of Plaintiff's attorney, Kenneth E. Macklin, in a letter of December 24, 1975 from Defendant's attorney, Peter L. Costas; those of the type mentioned in Defendant's Interrogatories to Plaintiff; publications relating to the COLECO BOWL-A-MATIC 300 and 600 games, such as the instruction sheet for the former model and advertisements in newspapers and catalogs and mentions in the COLECO annual reports. The Plaintiff would also have been aware of whatever printed matter would have pertained to his own bowling games manufactured by T. Cohn, Inc.

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INTERROGATORY NO. 11. Identify all toy bowling games of which plaintiff had knowledge prior to his alleged invention of the patent in suit and state as to each the date and circumstances when plaintiff first became aware thereof.

Answer to Interrogatory No. 11:

Plaintiff recalls having seen the following described toy bowling games prior to his invention of the patent in suit:

(a) One with free standing wood pins manually placed on a printed mat for location, balls free running, no pin resetting mechanism.

(b) One similar to (a), but on a low table on which several games could be played, including bowling.

(c) One similar to the Dicker Patent (U.S. Patent No. 2,819,020), but the pins were free standing, manually replaced and not connected to strings, and there were no holes in the alley.

(d) Plaintiff designed a bowling game which was sold by T. Cohn, Inc., prior to the invention of the patent in suit. That game had a set of 10 half bowling pins (only front half), each of which was independently spring hinged and latched at the top with an indicator which became visible to the player when he struck the pin with the playing ball, thereby releasing the latch and causing the vertical half pin to assume a horizontal position by the spring urged hinge swinging the pin up and backward out of the playing area.

INTERROGATORY NO. 12. Did plaintiff or his counsel make or cause to be made a search of the prior art relating to bowling games at any time prior to issuance of the patent in suit?

Answer to Interrogatory No. 12:

Based on recollection, Plaintiff cannot state with certainty, whether or not he or his counsel made a search or caused a search to be made of the prior art relating to bowling games at any time prior to issuance of the patent in suit. Plaintiff has no personal records of such a search and neither does T. Cohn, Inc. nor Plaintiff's counsel of that time.

INTERROGATORY NO. 13. If the answer to Interrogatory No. 12 is in the affirmative, state:

a. the date of such search;

b. the person conducting such search;

c. the patents and publications developed thereby;

d. the date, author and recipient of any report relating thereto.

Answer to Interrogatory No. 13:

Plaintiff cannot answer this question for the reasons stated in answer to Interrogatory No. 12.

INTERROGATORY NO. 14. Identify each and every patent and publication relating to bowling games which was brought to the attention of the Patent Office Examiner by plaintiff or his counsel during prosecution of the application which matured into the patent in suit. Identify any and all documents relating thereto.

Answer to Interrogatory No. 14:

On information and belief, no patents or publications relating to bowling games were brought to the attention of the Patent Office Examiner by Plaintiff or his counsel during prosecution of the application which matured into the patent in suit.

INTERROGATORY NO. 15. When and under what circumstances did plaintiff first learn of the following patents:

Wardrop U.S. Patent 1,800,809
Sunday U.S. Patent 2,928,676
Regnier U.S. Patent 1,494,285
Warner U.S. Patent 2,229,712
Roshon U.S. Patent 1,711,968
Munro Canadian Patent 556,468

Answer to Interrogatory No. 15:

On information and belief, Plaintiff first learned of the six patents listed in Interrogatory No. 15 sometime on or after November 11, 1975 in consultation with his Counsel, Kenneth E. Macklin, in connection with this suit.

More specifically on information and belief:

(a) Plaintiff probably first learned of the existence of the Roshon and Munro patents as References Cited in the COLECO U.S. Patent No. 3,866,691, a copy of which was provided to Kenneth E. Macklin on November 11, 1975 by COLECO'S Counsel, Peter L. Costas, after the taking of Plaintiff's deposition on that date.

(b) Plaintiff probably first learned of the Wardrop patent in January 1976, after a copy had been ordered by Kenneth E. Macklin. The patent had been brought to the attention of Kenneth E. Macklin by Peter L. Costas in a letter dated December 24, 1975.

Plaintiff obtained copies of the Sunday, Regnier and Warner patents on April 26, 1976 after having been told of their being part of the subject matter of Interrogatory 15 of the Defendant's Interrogatories to Plaintiff in this suit.

INTERROGATORY NO. 16. With reference to Claim 1 of the patent in suit and the bowling game manufactured by defendant which plaintiff has charged to infringe, identify each element of the defendant's game which is considered to respond to the following limitations of the claim, and to facilitate response, plaintiff may utilize the reference numerals of Freeman United States Patent No. 3,866,691 which defendant represents to be directed to the accused game:

a. a toy bowling game comprising

b. a flat substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface

c. said base plate having upstanding flanges integral with the opposite side edges thereof

d. an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on said base plate

e. a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame

f. a supporting member positioned above said guide plate and spaced therefrom

g. said supporting member being mounted for movement relative to said base plate

h. spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate

i. a bowling pin carried by said supporting member and having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on said base plate in upright position

j. an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate

k. said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the magnet on the bowling pin to contact the metal base plate

l. said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnet resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position

m. and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.

Answer to Interrogatory No. 16:

With reference to Claim 1 of the Cohn patent in suit and the bowling games manufactured by the Defendant which the Plaintiff has charged to infringe, Plaintiff has set forth on the follwoing pages the elements mentioned in Claim 1 and indicated alongside each of the listed elements the elements of Defendant's game which correspond, by reference to the Assembly Instructions packed with the game and COLECO U.S. Patent No. 3,866,691, which Defendant represents to be directed to the Coleco bowling games.

FROM CLAIM 1 OF COHN PATENT IN SUIT	COLECO BOWL-A-MATIC 300 ASSEMBLY INSTRUCTIONS (GUIDE NO.48350A)*	COLECO U.S. PATENT NO. 3,866,691
a. a toy bowling game comprising	Marked "I" on page 1	Fig. 1
b. a flat substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface	Not well shown	72 in Fig. 1 and Fig. 9 and 120 in Fig. 9
c. said base plate having upstanding flanges integral with the opposite side edges thereof	Marked "Flanges" in "I"	74 and 76 in Fig. 1
d. an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on said base plate	Rear Housing 8	14 in Fig. 1, also 34, 36, and 40 in Fig. 6
e. a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame	Cone Insert 7	118 in Fig. 6
f. a supporting member positioned above said guide plate and spaced therefrom	Spring Bar 12	110 in Fig. 5
g. said supporting member being mounted for movement relative to said base plate	Fig. in Step 11	110 in Fig. 5 and Col. 3 lines 31 to 34
h. spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate	A and B in Fig. in Step 11	Springs 112 in Fig. 5
i. a bowling pin carried by said supporting member and having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on said base plate in upright position	Figs. in Step 5 and Step 8	102 and 136 in Fig. 8
j. an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate	Cords 4 and Springs 11	116 and 114 in Fig. 8

FROM CLAIM 1 OF COHN PATENT IN SUIT	COLECO BOWL-A-MATIC 300 ASSEMBLY INSTRUCTIONS (GUIDE NO. 48350A)	COLECO U.S. PATENT NO. 3,866,691
k. said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the magnet on the bowling pin to contact the metal base plate	Figs. in Steps 5 and 11	Fig. 8, Col. 3, lines 37 to 51, Col. 4, lines 34 to 53
l. said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnet resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position	"I" and Fig. in Step 14	Fig. 8
m. and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.	A and B in Fig. in Step 11	112 in Fig. 5

INTERROGATORY NO. 17. With reference to Claim 4 of the patent in suit and the bowling game manufactured by defendant which plaintiff has charged to infringe, identify each element of the defendant's game which is considered to respond to the following limitations of the claim, and to facilitate response, plaintiff may utilize the reference numerals of Freeman United States Patent No. 3,866,691 which defendant represents to be directed to the accused game:

a. a toy bowling game comprising

b. a flat substantially rectangular shaped metal base plate having an extensive upper surface

c. said base plate having upstanding flanges integral with the opposite side edges thereof

d. an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with said flanges and secured to said base plate

e. a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame

f. a supporting member positioned above said guide plate and spaced therefrom

g. said supporting member being mounted for movement relative to said base plate

h. spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate

i. a bowling pin carried by said supporting member

j. magnetic means for attracting the pin to the base plate to enable the pin to be supported on said base plate in upright position

k. an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate

l. said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the base of the bowling pin to contact the metal base plate

m. said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnetic means resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position

n. and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.

Answer to Interrogatory No. 17:

With reference to Claim 4 of the Cohn patent in suit and the bowling games manufactured by the Defendant which the Plaintiff has charged to infringe, Plaintiff has set forth on the following pages the elements mentioned in Claim 4 and indicated alongside each of the listed elements the elements of Defendant's game which correspond, by reference to the Assembly Instructions packed with the game and COLECO U.S. Patent No. 3,866,691, which Defendant represents to be directed to the COLECO bowling games.

FROM CLAIM 4 OF COHN PATENT IN SUIT	COLECO BOWL-A-MATIC 300 ASSEMBLY INSTRUCTIONS (GUIDE NO. 48350A)	COLECO U.S. PATENT NO. 3,866,691
a. a toy bowling game comprising	Marked "I" on page 1	Fig. 1
b. a flat substantially rectangular shaped metal base plate having an extensive upper surface	Not well shown	72 in Fig. 1 and Fig. 9 and 120 in Fig. 9
c. said base plate having upstanding flanges integral with the opposite side edges thereof	Marked "FLANGES" in "I"	74 and 76 in Fig. 1
d. an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with said flanges and secured to said base plate	Rear Housing 8	14 in Fig. 1 also 34, 36 and 40 in Fig. 6
e. a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame	Cone Insert 7	118 in Fig. 6
f. a supporting member positioned above said guide plate and spaced therefrom	Spring Bar 12	110 in Fig. 5
g. said supporting member being mounted for movement relative to said base plate	Fig. in Step 11	110 in Fig. 5 and Col. 3, lines 31 to 34
h. spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate	A and B in Fig. in Step 11	Springs 112 in Fig. 5
i. a bowling pin carried by said supporting member	Fig. in Step 5	102 in in Fig. 9
j. magnetic means for attracting the pin to the base plate to enable the pin to be supported on said base plate in upright position	Fig. and description in Step 8	136 in Fig. 8.
k. an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate	Cords 4 and Springs 11	116 and 114 in Fig. 8

FROM CLAIM 4 OF COHN PATENT IN SUIT	COLECO BOWL-A-MATIC 300 ASSEMBLY INSTRUCTIONS (GUIDE NO. 48350A)	COLECO U.S. PATENT NO. 3,866,691
l. said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the base of the bowling pin to contact the metal base plate	Figs. in Steps 5 and 11	Fig. 8 Col. 3, Lines 37 to 51, Col. 4, Lines 34 to 53
m. said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnetic means resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position	"I" and Fig. in Step 14	Fig. 8
n. and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.	A and B in Fig. in Step 11	112 in Fig. 5

May 7, 1976

David Cohn

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER)

Before me personally appeared David Cohn, known to me, who did subscribe and swear to the answers to such interrogatories as being true to the best of his knowledge, information and belief.

NOTARY PUBLIC

KENNETH E. MACKLIN
Notary Public, State of New York
No. 60-7659975
Qualified in Westchester County
Cert. Filed with New York Co. Clk.
Commission Expires March 30, 1978

Exhibit D

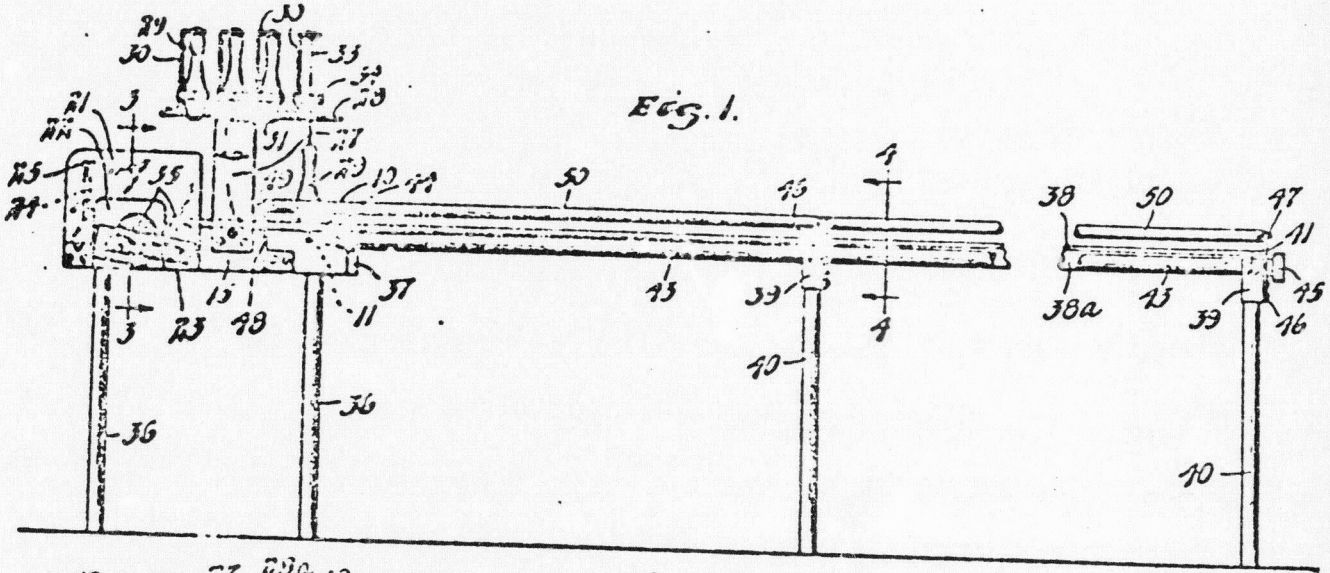

Fig. 1.

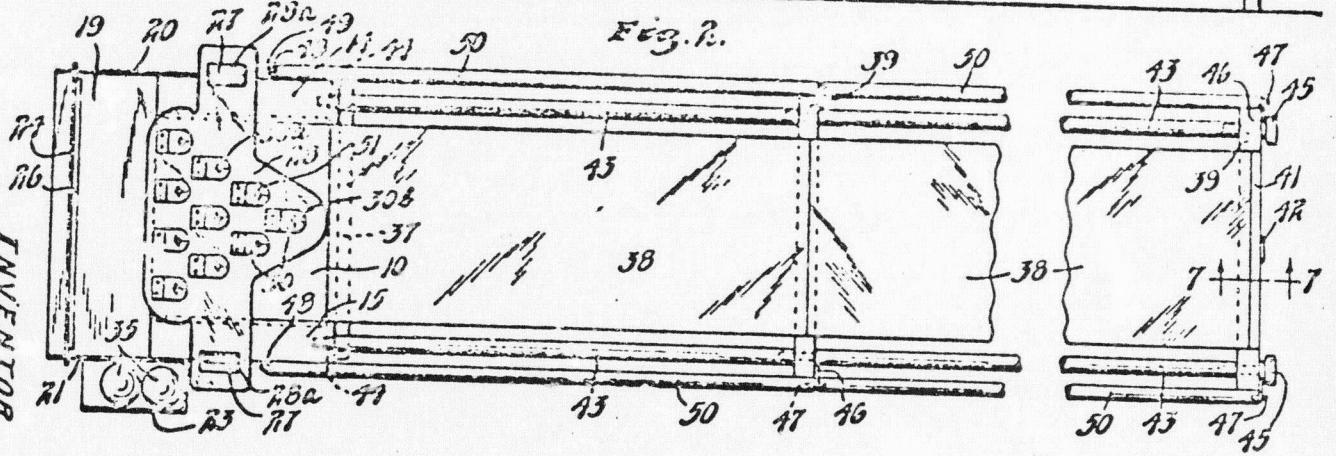

Fig. 2.

INVENTOR.
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BY HIS ATTORNEYS.
Williamson & Williamson

Exhibit D

Oct 8, 1940 R. L. Lloyd
Bowling Alley
Filed Oct 10, 1938
3 Sheets - Sheet 1
2,217,063

p 130

Oct. 8, 1940. R. L. LLOYD 2,217,063

BOWLING ALLEY

Filed Oct. 10, 1938 3 Sheets-Sheet 2

Fig. 3.

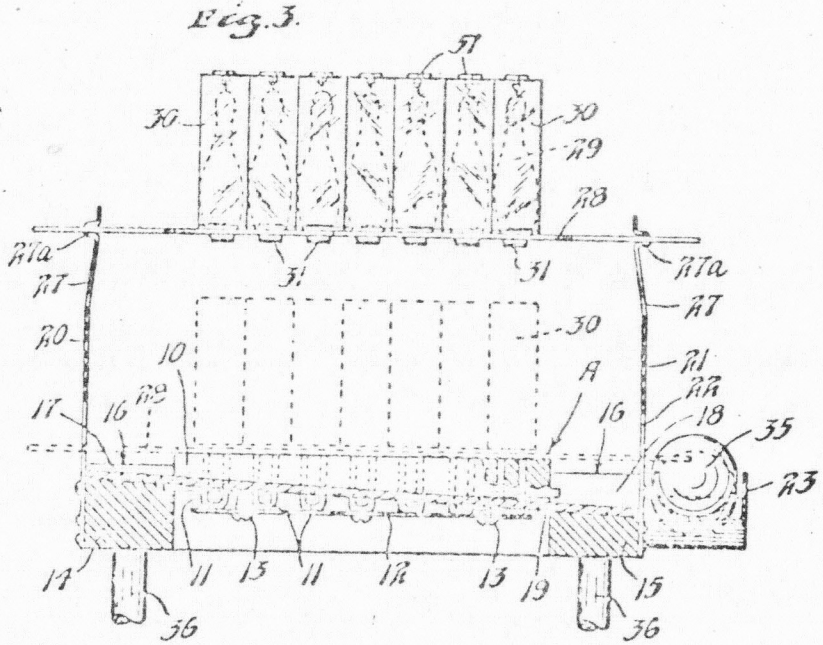


Fig. 4.

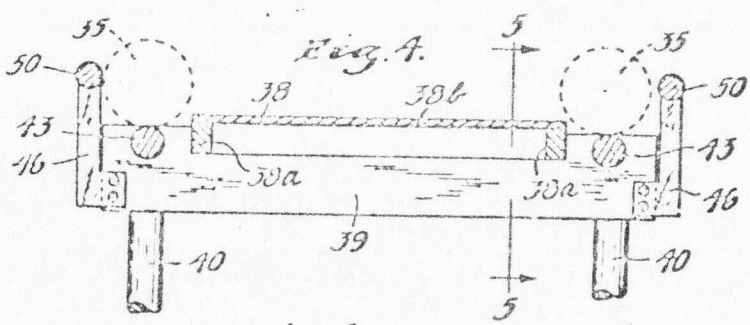
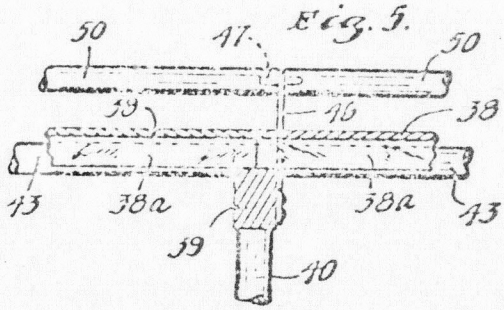


Fig. 5.



INVENTOR.
RICHARD L. LLOYD.
BY HIS ATTORNEYS.
Williamson & Williamson

Oct. 8, 1940. R. L. LLOYD 2,217,063

BOWLING ALLEY

Filed Oct. 10, 1938 3 Sheets-Sheet 3

Fig. 8.

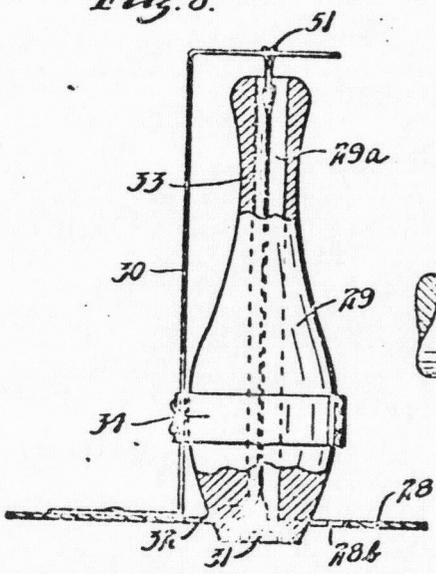


Fig. 6.

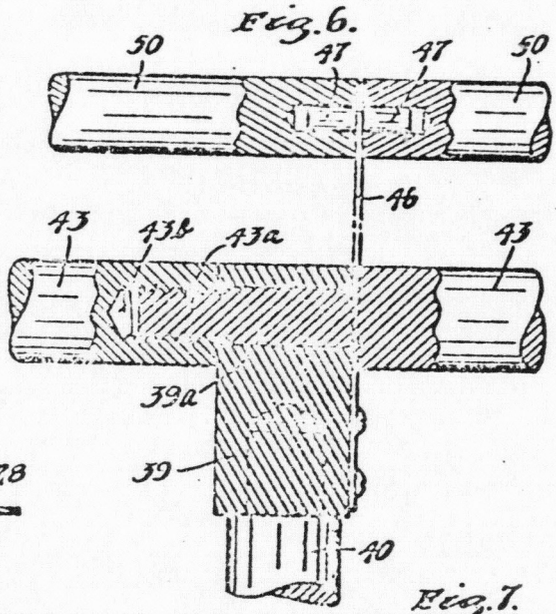


Fig. 9.

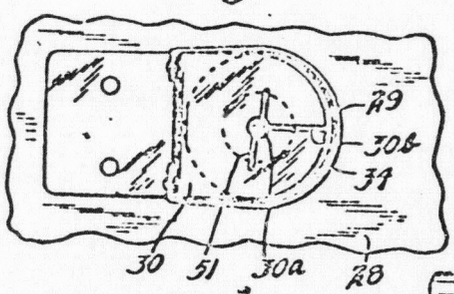
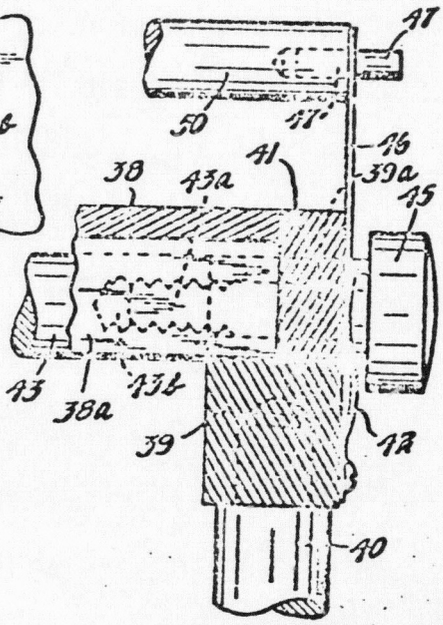


Fig. 7.



INVENTOR.
RICHARD L. LLOYD.
BY HIS ATTORNEYS.
Williamson & Williamson

Patented Oct. 8, 1940

2,217,063

UNITED STATES PATENT OFFICE

2,217,063

BOWLING ALLEY

Richard L. Lloyd, Minneapolis, Minn.

Application October 10, 1938, Serial No. 234,148

8 Claims. (Cl. 273—51)

This invention relates to bowling alleys.

It is one of the objects of the invention to provide a novel and improved bowling alley of knock-down construction including simple and effective means for holding the parts in assembled relation for play and at the same time assisting in forming ball gutters.

Another object is to provide a cheap and simple bowling alley which may be shipped and stowed away in knock-down condition in small compass and which can be quickly and readily assembled for play when desired.

Another object is to provide a bowling alley having at the rear of the pin receiving base a novel mechanism for absorbing the kinetic energy of the balls after they have passed over the pin area of the pin base.

Still another object is to provide a novel and improved pin setting mechanism for a bowling alley.

The objects and advantages of the invention will more fully appear from the following description, made in connection with the accompanying drawings, in which like reference characters refer to the same or similar parts throughout the various views, and in which

Fig. 1 is a view in side elevation illustrating a bowling alley embodying the invention;

Fig. 2 is a plan view of the bowling alley;

Fig. 3 is a vertical section in enlarged scale taken on the line 3—3 of Fig. 1, as indicated by the arrows;

Fig. 4 is a vertical transverse section taken on the line 4—4 of Fig. 1, as indicated by the arrows;

Fig. 5 is a vertical longitudinal section taken on the line 5—5 of Fig. 4, as indicated by the arrows;

Fig. 6 is an enlarged detail of certain of the parts shown in Fig. 5, a number of the parts being broken away and shown in section;

Fig. 7 is a longitudinal section taken on the line 7—7 of Fig. 2, but showing the parts in enlarged scale;

Fig. 8 is a detail taken chiefly in side elevation and vertical section of part of the pin setting mechanism, and

Fig. 9 is a plan view looking down on the structure shown in Fig. 8.

Referring to the drawings, a knock-down bowling alley is provided in accordance with the invention which can be employed for playing the game of tenpins or any other game commonly played on the ordinary bowling alley.

The bowling alley includes a pin base designated as an entirety by the letter A. This pin base includes a rectangular block 10 having pairs of vertical openings running therethrough to receive the arms of U-shaped permanent magnets 11, these magnets being located relative to the block 10 at points which correspond to the tenpin receiving spots on an ordinary bowling alley. The magnets 11 rest on a triangular plate 12 underlying the block 10 and spaced therefrom by spacing studs 13. At the sides of the block 10 bars 14 and 15 are secured to the block and the upper surfaces of these bars are located somewhat below the top surface of the block 10 to form gutter continuations 16. The two bars 14 and 15 project rearwardly from the block 10 and have inclined notches 17 and 18 cut therein so that the top surfaces of these notches lie in the same plane and an inclined ball chute 19 rests in the notches 17 and 18 with the forward edge of the chute flush against a portion of the rear end of block 10 and, of course, the chute 19 is secured to the bars 14 and 15. Naturally, the top surface of the chute 19 is at a lower level than the top of the block 10. Attached to the outer sides of the two bars 14 and 15 respectively, are side plates 20 and 21 which extend from the rear ends of the bars 14 and 15 forwardly for some little distance in opposed relation. In alignment with the chute 19 the plate 21 is provided with an opening 22 to permit passage of the bowling balls from the chute 19 into a ball retaining cup 23 attached to the bar 15 adjacent side plate 21, this cup having a downwardly and forwardly inclined bottom.

Extending across between the two side plates 20 and 21 adjacent the top rear edge thereof and over the chute 19 is a swinging gate 24 having end tab projections fulcrumed within angular-shaped notches 25 formed by providing triangular-shaped openings in the side plates 20 and 21. These openings have rear vertical walls. With this arrangement the gate 24 is mounted for limited rearward swinging movement, but cannot swing forwardly and as a result swinging movement of the gate is checked. The gate 24 normally hangs by gravity substantially vertically from the two plates 20 and 21. A pad of absorbent material 26 is preferably secured to the forward side of the gate. With this arrangement a bowling ball, after having moved with considerable force over the top surface of block 10, strikes the pad 26 of the gate 24 tending to swing the gate rearwardly and most of the kinetic energy of the ball is absorbed by the

gate so that the ball drops without bouncing onto the chute 19 to roll down the chute through the opening 22 into the cup 23.

Forward of the two side plates 20 and 21 upstanding stanchions 27 are secured to the outer sides of the two bars 14 and 15 in opposing relation. These stanchions are preferably of spring steel and are bent toward each other slightly adjacent their upper ends and are equipped with notches 27a near their upper ends. A locator plate 28 overlies the block 10 and has lateral projecting arms with passages 28a therein through which the stanchions 27 extend. When the locator plate 27 is raised to the position shown in Fig. 3, the spring tension of the stanchions 27 will force the upper portions of the stanchions inwardly to cause the arms of the locator plate 28 adjacent the inner sides of the opening 28a to be engaged within the notches 27a. The extreme upper ends of the stanchions form handles which can be swung outwardly to cause disengagement between the notches 27a and the arms of the locator plate 28a, thereby permitting the locator plate and the parts carried thereby to be lowered downwardly against the block 10 of the pin base A while being guided by the stanchions 27.

Above each magnet 11 the locator plate 28 is provided with a tenpin opening 28b through which a tenpin 29 may pass. Secured to the top of the locator plate 28 preferably at the rear of each opening 28b is a pin supporting bracket 30 having a lower horizontal arm secured to the plate 28, an elongated upstanding arm and a top horizontal arm overlying the pin opening 28b. Each tenpin 29 is provided with a bore 29a extending from top to bottom thereof and fitting within the base of the tenpin is a small cup or block 31 formed of a metal such as iron which is subject to attraction by a magnet. The top horizontal arm of each bracket 30 is provided, as best seen in Fig. 9, with a small aperture 30a communicating with a narrow slot 30b running to the edge of the arm and a wire eye 31 has oppositely bent arms which project through the aperture 30a. Mounted in each cup 31 is another eye 32. An elastic cord 33 for each pin 29 is connected at one end to an upper eye 31 and is connected at its other end to an eye 32. This elastic is of such strength that it will hold the pin 29 normally upwardly in the position shown in Fig. 3, but the elastic does not have sufficient strength to raise the pin 29 to which it applies from one of the magnets 11 when the cup 31 of that pin is engaged with the magnet. The pin 29 can be removed from its bracket 30 by raising the eye 31 well above the upper arm of the bracket and thereupon passing the elastic cord 33 through the slot 30b. The upstanding arm of each bracket 30 carries a pin confining ring 34 near its lower end which will encircle the pin 29 and confine it at the greatest diameter of the pin for guiding movement down onto the block 10 of the pin base A when the pin is in the raised position shown in Fig. 8.

To set the pins 29 after some or all of them have been knocked down by the bowling balls 35, it is merely necessary to disengage the notches 27a of the stanchions 27 from the locator plate 28, whereupon by running the plate 28 downwardly on the stanchions against the block 10 of the pin base A, all the pins 29 are made to stand upright on the block 10 in their proper position with the various cups 31 of the pins in contact with the magnets 11. After the plate 28 is lowered, it is raised to the position shown in Figs. 1 and 3 whereupon the plate will be supported above the block 10. As the plate 28 is raised the elastic cords 33 will be stretched, but the force attracting the cups 31 to the magnets 11 will be sufficient to maintain the pins in upright position on the blocks 10 against the tension of the elastic cords 33. They will be maintained in such position until knocked down by the balls 35 whereupon as the balls strike the pins, the cups 31 will be knocked off the magnets 11 and thereupon the elastic cords 33 will raise the pins 29 to their upper positions through the pin openings 28b in the plate 28.

The pin base A is preferably supported as by four legs 36 mounted in the bars 14 and 15 and projecting downwardly therefrom. A cross supporting bar 37 preferably runs across between the forward ends of the two bars 14 and 15.

To form a ball runway a plurality of ball runway sections 38 are provided, each of these sections including a pair of side bars 38a supporting a deck 38b. The various runway sections 38 are longitudinally aligned with the block 10 of the pin base A with the top surfaces of the decks 38b flush with the top surface of the block 10. The rear runway section 38 is supported at its rear end by the cross bar 37 and cross bars 39 support adjacent ends of the various runway sections. These cross bars 39 are notched downwardly from their upper edges, as best shown in Fig. 4, to receive the side bars of the runway sections and it will be noticed from an inspection of Fig. 4 that laterally of the runway sections 38 the cross bars 39 extend below the level of the top surfaces of the decks 38b. Each cross bar 39 is supported as from the floor by means of a pair of legs 40 attached to the cross bar. Attached to the forwardmost end of the forwardmost runway section 38 is a cross slat 41, best seen in Fig. 7, and in order that the various runway sections may be held tightly in engagement with each other, and pressed toward the block 10 of the pin base A, a bar spring 42 is secured at its lower end to the forward side of the front cross bar 39 and the free end portion of this spring bears against the cross slat 41 to urge all of the runway sections 38 toward the block 10 of the pin base A.

In order to hold the various parts in assembled relation and to permit of ease in assembling and in disassembling the parts as well as to assist in forming ball gutters at the sides of the ball runway sections 38, a plurality of rods 43 are provided. Each rod 43, as best shown in Fig. 6, has one reduced end 43a forming a dowel pin which is screw threaded near its end. Each rod 43 also has a tapped recess 43b in its other end adapted to receive the screw threaded portion of the dowel 43a of an adjacent rod 43. The various cross bars 39 are provided with openings 39a in spaced relation outwardly from the side edges of the runway sections 38 to receive the dowels 43a and these openings 39a are at such a level that when a dowel 43a is inserted in one of the openings the upper portions of the rod 43 carrying the dowel will be approximately flush with the top surfaces of those portions of the cross bar 39 laterally of the runway sections 38.

The forward ends of the two bars 14 and 15 are provided with suitable tapped openings 44 to receive dowels 43a, these tapped openings being of course aligned at the same level with the openings 39a in the cross bars 39. In assembling the bowling alley, a pair of the rods 43 are re-

leasably connected to the two bars 14 and 15 of the pin base A by screwing the dowels 43a of these two rods into the tapped openings 44. A second pair of rods 43 are then used and the dowels 43a of these rods are passed through the openings 39a of the rearmost cross bar 39 and the dowels of these latter two rods are then screwed into the tapped openings 43b of the first two rods 43 to produce the structure shown in Fig. 6. It will be seen that the cross bar 39 is clamped between ends of the first two rods 43 used and shoulders formed adjacent the ends of the next two rods used. Additional cross bars 39 and rods 43 are employed until a runway of the proper length is obtained. The front cross bar 39 instead of being secured in place by additional rods 43 is clamped by means of short headed screws 45 which may be of wooden construction to properly fit the forward ends of the forwardmost rods 43. Of course, the runway sections 38 are put in place to rest on the cross bars 37 and 39 after the cross bars 39 and rods 43 have been assembled together with the pin base A. It will be noted, as perhaps best shown in Figs. 4 and 5, that the upper surfaces of the rods 43 lie at a level somewhat below the top surfaces of the runway sections 38 for a purpose presently to appear, and it will also be noted that these rods 43 run parallel to the side edges of the runway sections 38 in outwardly spaced relation therefrom a distance preferably somewhat greater than the radius of one of the balls 35 and less than the diameter of one of the balls.

Secured to the forward sides of each cross bar 39 adjacent each outer end thereof is an angular-shaped rail bracket 46 shown in detail in Figs. 4, 5 and 6. Each rail bracket has a short arm secured to the cross bar 39 and it has an elongated upstanding arm within the upper end portion of which a pin 47 is secured, this pin projecting from both faces of the bracket. Attached to the sides of the two bars 14 and 15 are a pair of rail brackets 49 carrying pins 49 and similar to the brackets 46 with the exception that the short arms of the brackets 46 are set normal to the long upstanding arms of these brackets. The brackets 49 are of course located closely adjacent the forward edges of the stanchions 27. Rods 50 forming side rails have pin openings within their ends to receive the projecting portions of the pins 47 and pins 49. The brackets 46 and 49 have considerable resiliency and accordingly, the rods 50 forming the side rails can be engaged with the pins 49 and 47 after the rods 43 and crossbars 39 have been assembled together. For example, a pair of rear rods 50 can be first applied by engaging the forward end portions of the pins 49 in the rear pin openings of these rods, whereupon the two rearmost rail brackets 46 can be sprung forwardly and the rear portions of the pins 47 of these brackets 46 can be aligned with the forward pin openings in the rear rods 50 and the brackets 46 can then be released. In like manner the more forward rods can be applied.

It will be noted that the side rails formed by the rods 50 are located well above the level of the top surfaces of the runway sections 38, and the rods 50 are also spaced outwardly from the side edges of the runway sections 38 preferably a distance approximating the diameter of the balls 35 employed. The side edges of the runway sections 38, the rods 43 and the side rails 50 accordingly form ball gutters at the sides of the runway sections 38 so that if the balls run sideways off the runway sections they are caught in the gutters to pass rearwardly along the alley into the gutter extensions 16 without striking any of the pins 29 that may be set up on the pin base A. The inner edges of these gutters are formed by the side edges of the runway sections 38; the bottoms of the gutters are formed by the rods 43 which tie and hold the various parts in assembled relation and the outer sides of the gutters are formed by the rods or rails 50. In Fig. 4 a pair of the bowling balls 35 are illustrated in dotted lines as they will appear when rolling down the gutters.

It will be seen that an exceedingly cheap and simple bowling alley is provided which can be shipped in knocked-down condition and quickly and readily assembled for use in bowling and which can again be knocked down and stowed away in small space.

It will, of course, be understood that various changes may be made in the form, details, arrangement and proportions of the various parts without departure from the scope of the present invention, which generally stated, consists in the matter shown and described and set forth in the appended claims.

What is claimed is:

1. A bowling alley having in combination a pin base, a plurality of ball runway sections aligned with said pin base, the side edges of which sections form the inner edges of ball gutters, cross supports supporting said sections, tie rods spaced outwardly from the side edges of said sections located below the top surfaces thereof, extending between and forming ties between the various cross supports and forming the bottoms of the ball gutters and rails spaced outwardly from said rods and extending above the level of the top surfaces of said sections and forming the outer sides of said gutters.

2. The structure defined in claim 1, and resilient means pressing said runway sections towards said pin base.

3. The structure defined in claim 1, said cross supports being notched to receive said runway sections.

4. The structure defined in claim 1, said cross supports being notched to receive said runway sections and resilient means pressing said runway sections towards said pin base.

5. A knock-down bowling alley comprising a pin base, a plurality of ball runway sections aligned with said pin base, a plurality of cross supports upon which said runway sections rest, a plurality of rods spaced laterally from the sides of said runway sections located at a level below the top surfaces of said runway sections and projecting between said pin base and the cross support most closely adjacent the pin base and between adjacent cross supports, said rods holding the parts in assembled relation, said pin base and said cross supports being mutually constructed to permit of releasable connection between the same and said pin base and cross supports, rails spaced outwardly from said rods and extending at higher levels than the top surfaces of said runway sections, the side edges of said runway sections, said rods and said rails cooperating to form ball gutters.

6. A bowling alley comprising a pin base upon which tenpins may be placed, a plurality of ball runway sections aligned with said pin base and having top surfaces flush with the top surface of said pin base, cross supports on which said runway sections rest, rods spaced from the sides

of said runway sections and located at lower levels than the top surfaces of said runway sections, said rods having means releasably connecting said rods to each other and to said pin base and said cross supports to hold said pin base, runway sections and cross supports in assembled relation, means resiliently urging said runway sections towards said pin base and side rails having releasable connection with said pin base and cross supports and extending well above the top surfaces of said runway sections and cooperating with the side edges of said runway sections and said rods to form ball gutters.

7. A bowling alley having in combination a pin base, a plurality of ball runway sections aligned with said pin base, the side edges of which sections form the inner edges of ball gutters, cross supports supporting said sections and tie rods spaced outwardly from the side edges of said sections, extending between and forming ties between the various cross supports and cooperating with the side edges of said runway sections to assist in forming the ball gutters and in supporting the balls as they run in such gutters.

8. A bowling alley having in combination, a pin base, a plurality of ball runway sections aligned with said pin base, a plurality of cross supports located at spaced intervals from said pin base and formed to loosely receive such runway sections, tie rods securing together such cross supports and said pin base and means carried by the cross support most remote [illegible] said pin base, normally bearing against the [illegible]nway section most remote from said pin base and urging all of said runway sections into tight engagement with each other and toward said pin base.

RICHARD L. LLOYD.

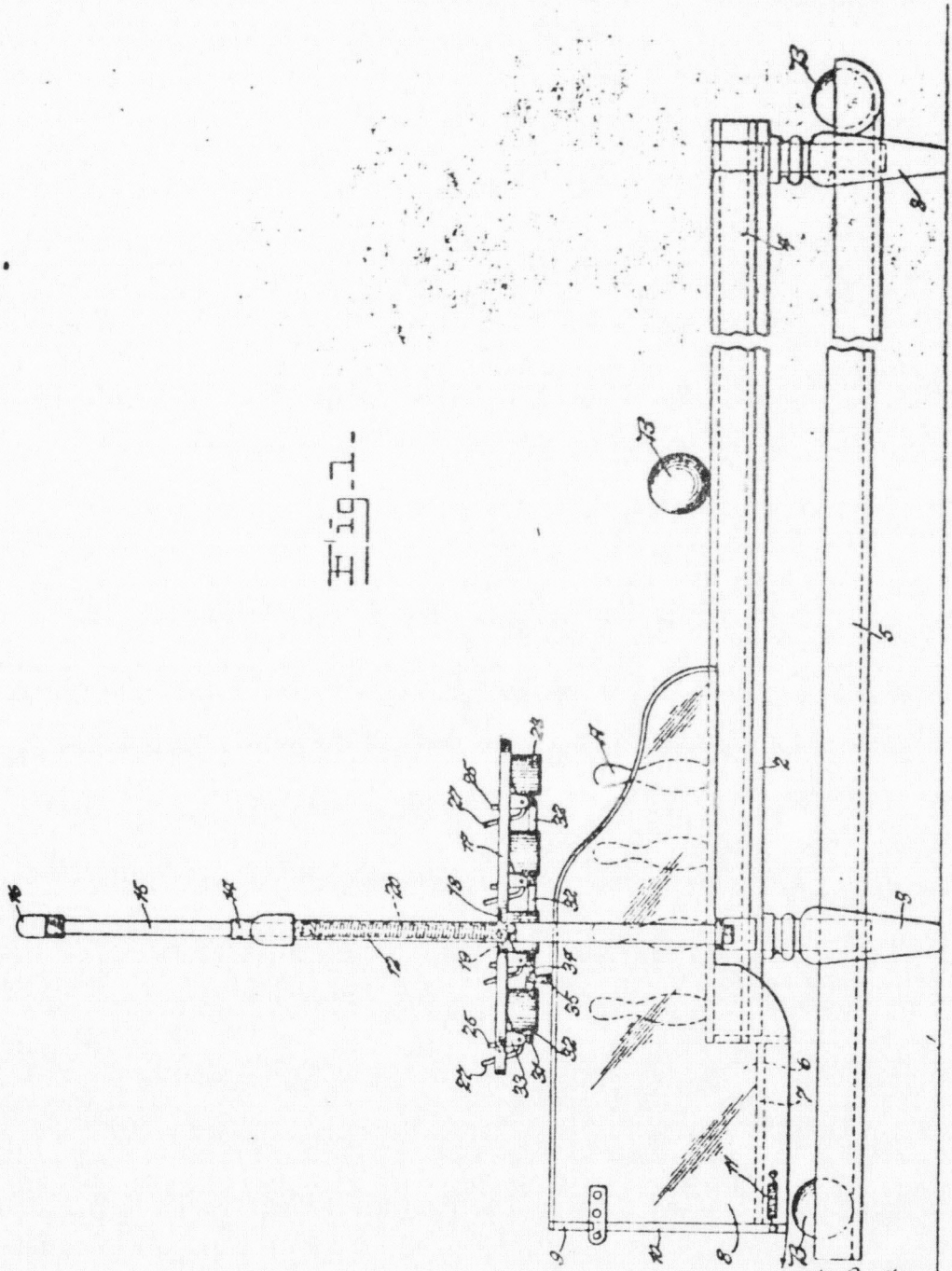
EXHIBIT E

June 13, 1933. B. S. IGOU 1,913,673

PIN SETTING DEVICE

Filed Oct. 31, 1931 3 Sheets-Sheet 1

Fig. 1.



Inventor
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by Rippey & Klingeland
His Attorneys

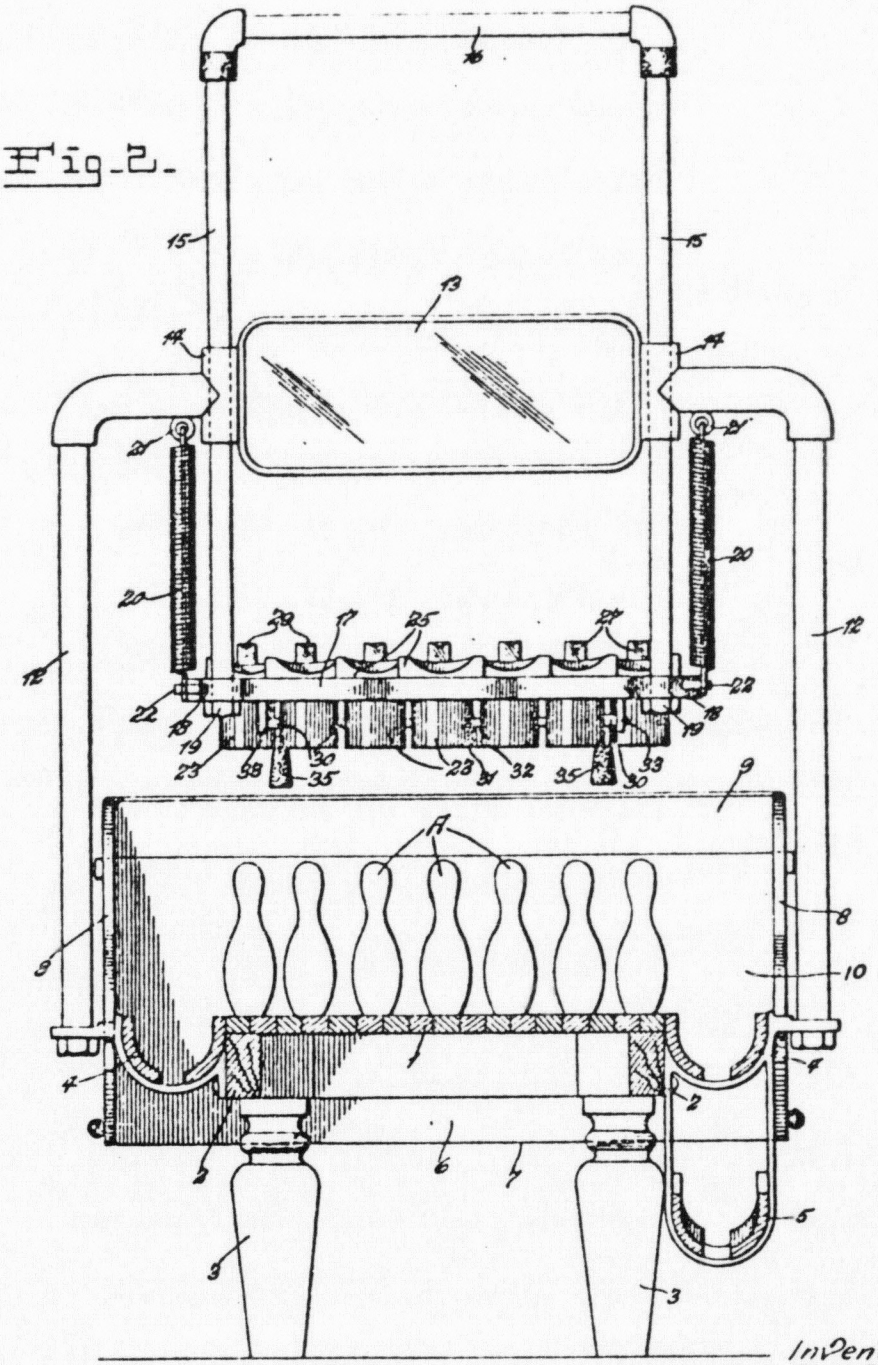
Exhibit E

June 13, 1933. B. S. IGOU 1,913,673

PIN SETTING DEVICE

Filed Oct. 31, 1931 3 Sheets-Sheet 2

Fig. 2.



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June 13, 1933. B. S. IGOU 1,913,673

PIN SETTING DEVICE

Filed Oct. 31, 1931 3 Sheets-Sheet 3

Fig. 3.

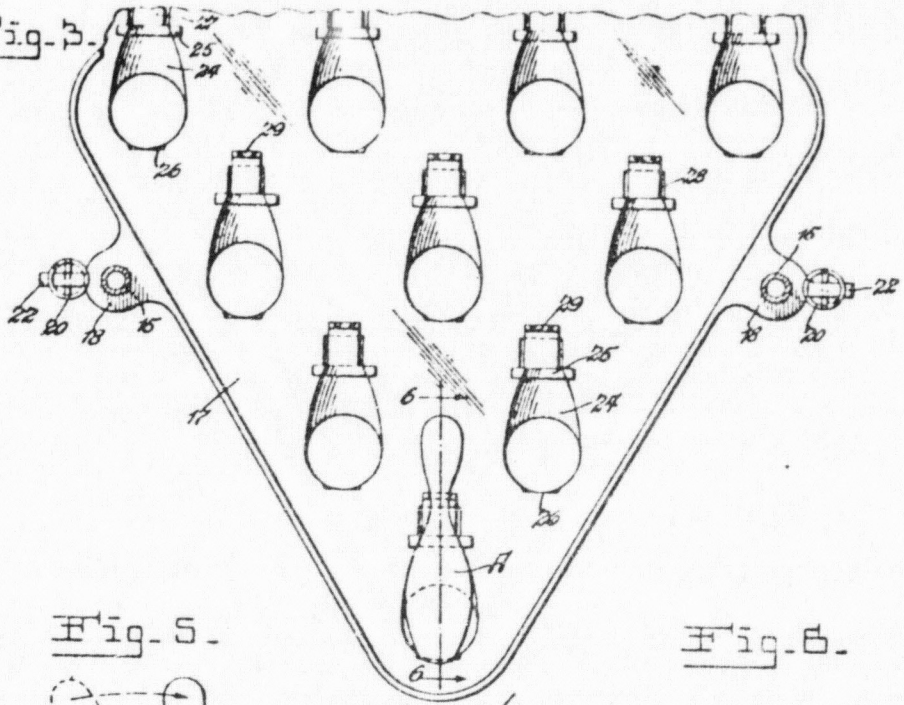


Fig. 5.

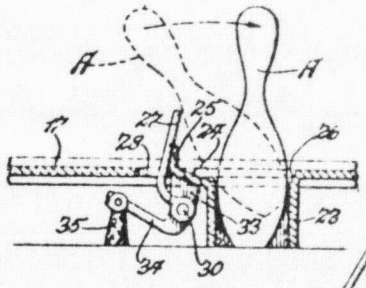
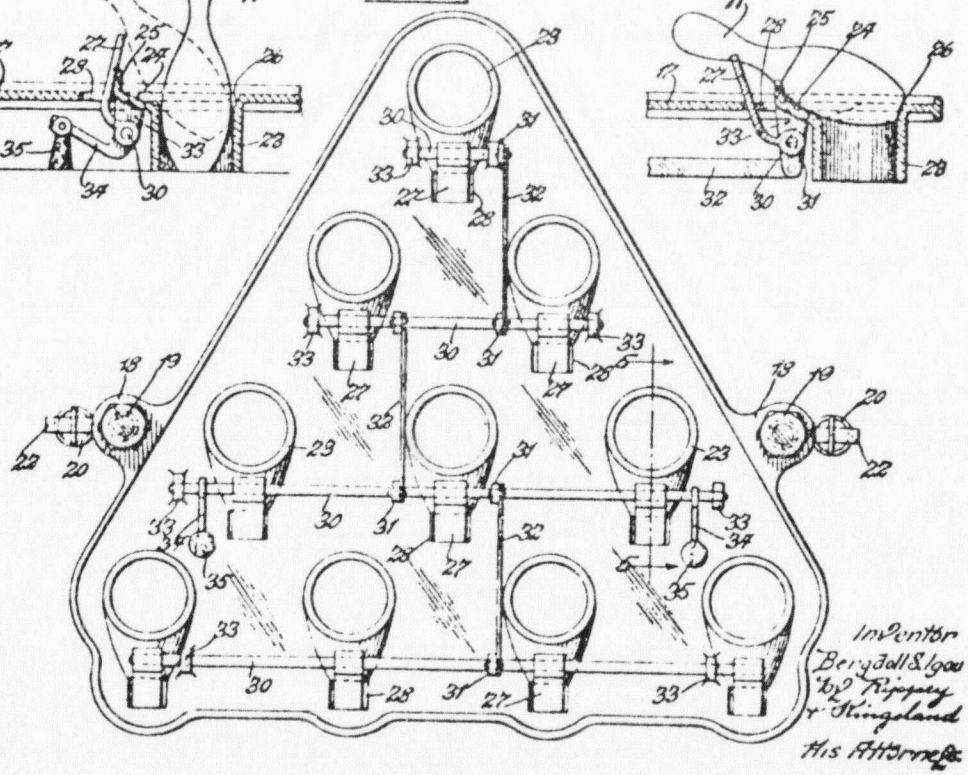


Fig. 6.

Fig. 4.



Inventor
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His Attorneys

UNITED STATES PATENT OFFICE

BERGDOLL S. IGOU, OF UNIVERSITY CITY, MISSOURI

PIN SETTING DEVICE

Application filed October 31, 1931. Serial No. 572,351.

This invention relates to pin setting devices for bowling alleys.

One of the objects of this invention is to provide a device having a suitable holder or template in which the pins may be arranged in other than vertical position, means whereby the template may be lowered to an alley, and tripping mechanism for upending and releasing the pins in such a manner that the pins will be set in proper arrangement on the alley and in an upright position.

Other objects will be apparent from the following detail description taken in connection with the accompanying drawings, in which—

Fig. 1 is a side elevation of the device.

Fig. 2 is a front elevation.

Fig. 3 is a plan view of the holder or template.

Fig. 4 is an inverted plan view of the holder or template.

Fig. 5 is a detail sectional view of the tripping mechanism.

Fig. 6 is a detail sectional view on line 6—6, Fig. 3.

While it is to be understood that the pin setting mechanism may be used and is adapted to be used in connection with regulation bowling alleys, the drawings, for convenience, show it arranged in connection with a portable alley.

Before a detail description of the device is made a brief general description will assist in understanding the construction and operation of the device. It will be understood, of course, that the game of tenpins is played upon an alley constructed of hardwood at the rear of which a series of pins A are set in conventional position. A ball B is bowled along the alley with the intent of knocking down as many pins as possible. It is necessary then, of course, to reset the pins. The device embodying this invention includes a holder or template, which is normally positioned above the rear of the alley and above the proper location of the pins. The upper surface of the template is arranged to hold the pins in other than a vertical position but above a guide which serves, when the template is lowered, to accurately position the pins. Mechanism is provided and arranged in such a manner that when the template is lowered the pins are upended to a vertical position. Thus when the template is lowered the pins, which have been placed upon the template in position slightly inclined from the horizontal, are tripped and pass through their respective guides in a vertical position and are thereby caused to be properly positioned on the alley.

An alley 1 is preferably constructed of polished hardwood which, as shown in the particular embodiment illustrated in the drawings, rests upon longitudinal beams 2 and is supported by legs 3. Gutters 4 are provided on each side of the alley to direct the ball when it rolls off the alley and a trough 5 is provided for the return of the ball.

A pit 6 is provided at the rear and has a floor 7, side aprons 8, a transverse member 9 and a hinged backboard 10. The backboard 10 is held resiliently in closed position by springs 11. The pin setting device is positioned at the rear of the alley and in front of the pit. It includes a rigid frame having vertical side members 12 and a cross member 13. The cross member 13 includes bosses 14 constituting vertical guideways for reciprocating mechanism which includes vertical side members 15 projecting through and reciprocating in the bosses 14.

The vertical reciprocating members 15 are connected at their tops by a handle bar or cross member 16. The reciprocating members 15 support from their bottom a pin holder or template 17. Ears 18 are provided on the template, preferably cast integral with it, by which the template may be secured to the members 15. Stud bolts 19 pass through holes in the ears 18 and have engagement with internal threads in the members 15.

The mechanism is counterweighted by springs 20 each of which has its upper end secured to a ring 21 depending from the cross member 13 and its lower end secured to a lug 22 projecting from an ear 18 on the template.

The template is provided with a series of depending cylindrical guideways 23 by

means of which the pins are caused to assume an upright position and by means of which the pins are properly located on the alley.

The top of the template is provided with beds above the guide members 23 so fashioned as to support the pins in a position slightly inclined from the horizontal, as best shown in Fig. 6. Each of the beds includes a concave portion 24, a shoulder 25 and a bevelled portion 26.

Mechanism is provided to act, when the template has been lowered, in such a manner as to upend the pins from their inclined position causing them to fall through the guides 23, and assume an upright position in their proper location on the alley. This mechanism includes arms 27 pivotally mounted, in a manner which will hereafter be described, on the bottom of the template and projecting through openings 28 in the template in such a position as to engage the shank of the pin. The top of each arm 27 has a concave portion 29, as best shown in Fig. 3, to conform to the shank of the pin.

Each of the arms 27 is secured to a rockshaft 30 and rotates with it. One or more arms 27 may be secured to the same rockshaft 30, as best shown in Fig. 4. Each rockshaft has a crank 31 and the several rockshafts 30 are connected together by links 32. The rockshafts 30 are mounted for rotation in lugs 33 depending from the template 17. One or more arms 34, two as shown in the drawings, are secured to a rockshaft 30; a shoe 35 is pivotally connected to the end of each arm 34 and is so arranged that when the template 17 is lowered the shoe or shoes 35 engage the alley, rocking the appertinent rockshaft 30 and through the links 32 the remaining rockshafts 30, thereby moving the arms 27 and thus upending the pins, as illustrated in Fig. 5.

It will thus be seen that mechanism simple in construction and operation has been provided to attain the objects of this invention. It will be obvious that parts of the invention may be used without the whole and that various changes may be made in the details of construction, within the scope of the appended claims, without departing from the spirit of this invention.

I claim:

1. In combination with an alley, a device of the class described including a template, means by which to vertically reciprocate the template, means on the template adapted to support a pin in other than vertical position, a rockshaft supported from the template, an arm adapted to engage and upend the pin and secured to the rockshaft, a lever on the rockshaft, a shoe secured to said lever and positioned to strike the alley when the template is moved to lowermost position whereby the rockshaft is rotated and the arm is caused to upend the pin.

2. In combination with an alley, a device of the class described including a template having spaced beds to receive pins in other than vertical position and openings adjacent said beds through which the pins may respectively drop when upended, guides depending from the template below said openings, a series of parallel rockshafts on the template, connections whereby movement of one rockshaft will move all of the shafts, arms secured to the rockshafts adjacent the beds and adapted to engage the pins and upend them, and a crank secured to one of the rockshafts for engagement with the alley when the template is moved to lowermost position.

3. A device of the class described including a template, means by which to vertically reciprocate the template, beds arranged adjacent spaced openings on the template and each comprising a concave portion on the template and a bevel portion on the periphery of the opening, a guide depending from the template below each opening, and means operable upon movement of the template to lowermost position to upend the pins.

BERGDOLL S. IGOU.

EXHIBIT F

Claim 4 as Filed	Claim 1 of the Cohn Patent
A toy bowling game comprising:	A toy bowling game comprising:
a flat metal base of magnetic material having an extensive upper surface;	a flat substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface,
	said base plate having upstanding flanges integral with the opposite side edges thereof,
	an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on said base plate,
	a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame,
a supporting member secured to said base and extending over the latter in spaced relation thereto;	a supporting member positioned above said guide plate and spaced therefrom,
	said supporting member being mounted for movement relative to said base plate,
	spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate,
a bowling pin having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on the flat base plate in upright position;	a bowling pin carried by said supporting member and having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on said base plate in upright position,
an elastic string secured to the tip of the bowling pin and to the said supporting member extending over the base;	an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate,
said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with the said metal base, and when more fully extended it will permit the magnet on the bowling pin to contact the metal base;	said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the magnet on the bowling pin to contact the metal base plate,

Claim 4 as Filed (cont.)

said pin being supported thereby in upright position and said magnet resisting removal of the pin from the base by the said elastic string.

Claim 1 of the Cohn Patent (cont.)

said pin being supported thereby in u[illegible]ight position on said base plate when said supporting member is depressed toward said base plate and said magnet resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position,

and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.

Claim 4 as Filed	Claim 4 of the Cohn Patent
A toy bowling game comprising:	A toy bowling game comprising:
a flat metal base of magnetic material having an extensive upper surface;	a flat substantially rectangular shaped metal base plate having an extensive upper surface,
	said base plate having upstandin flanges integral with the opposit side edges thereof,
	an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with said flanges and secured to said bas plate,
	a substantially triangular shape guide plate having relatively spaced openings therein mounte on said U-shaped frame,
a supporting member secured to said base and extending over the latter in spaced relation thereto;	a supporting member positioned above said guide plate and space therefrom,
	said supporting member being mounted for movement relative to said base plate,
	spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate,
a bowling pin having a permanent magnet provided with north and south poles disposed at its base to enable the pin to be attracted to and supported on the flat base plate in upright position;	a bowling pin carried by said supporting member, a magnetic means for attracting the pin to the base plate to enable the pin to be supported on said base plate in upright position,
an elastic string secured to the tip of the bowling pin and to the said supporting member extending over the base;	an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate,
said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with the said metal base, and when more fully extended it will permit the magnet on the bowling pin to contact the metal base;	said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the base of the bowling pin to contact the metal base plate

EXHIBIT F

Claim 4 as Filed (cont.)

said pin being supported thereby in upright position and said magnet resisting removal of the pin from the base by the said elastic string.

Claim 4 of the Cohn Patent (cont.)

said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnetic means resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position,

and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.

EXHIBIT G

United States Patent [19]

Freeman

[11] **3,866,691**

[45] **Feb. 18, 1975**

[54] **AUTOMATIC PINSETTING BOWLING GAME**

[75] Inventor: **Richard Freeman**, Manchester, Conn.

[73] Assignee: **Coleco Industries, Inc.**, Hartford, Conn.

[22] Filed: **Sept. 4, 1973**

[21] Appl. No.: **394,519**

[52] **U.S. Cl.** **273/44**

[51] **Int. Cl.** **A63d 5/08**

[58] **Field of Search** 273/44, 45

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Primary Examiner—Anton O. Oechsle

[57] **ABSTRACT**

An automatic pinsetting bowling game is provided which includes a housing assembly, a plurality of bowling pin-like members, reset means operatively connected to the bowling pin-like members, and control means for actuating the reset means. The housing assembly includes a front housing, a rear housing, and a longitudinally extending, substantially flat bed, i.e., playing surface which serves to interconnect the front and rear housings. The playing surface is configured in the form of a lane of a bowling alley, and has a plurality of first magnetic means which are arranged in a triangular-shaped cluster embedded therein adjacent the end of the playing surface which is connected to the rear housing. Each of the bowling pin-like members is provided with second magnetic means adapted to cooperate with a corresponding one of the plurality of first magnetic means whereby through magnetic attraction created therebetween, each of the bowling pin-like members is caused to be positioned in a preselected location on the playing surface. The reset means is actuatable between a first condition wherein if the magnetic attraction between the first magnetic means on the playing surface and the second magnetic means of one or more of the bowling pin-like members is weakened beyond a predetermined level the reset means is operable to cause the latter member or members to be lifted from the playing surface, and a second condition wherein the reset means operates to cause any bowling pin-like member which has been lifted from the playing surface to be repositioned in the location on the playing surface previously occupied thereby. The control means which is mounted so as to be externally accessible is operated to place the reset means in either the first condition or the second condition thereof.

8 Claims, 9 Drawing Figures

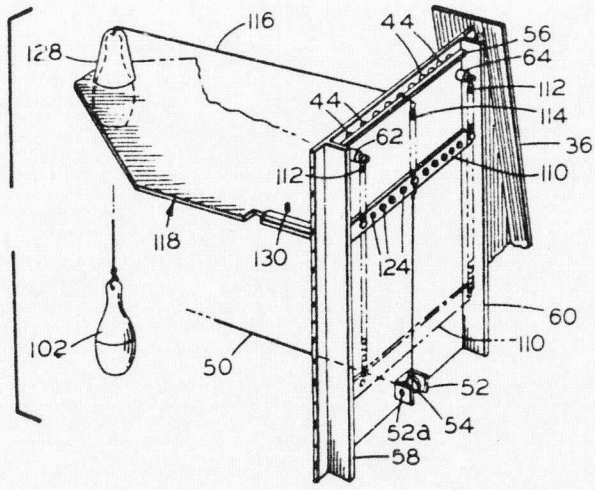


EXHIBIT G

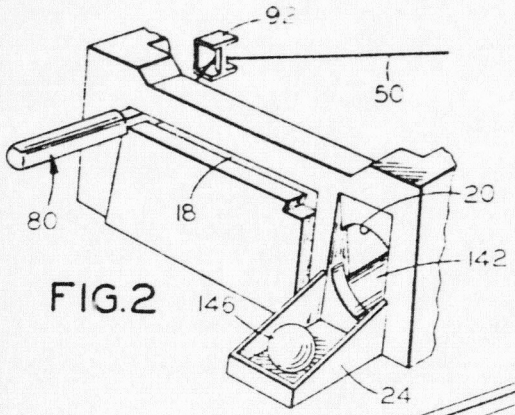


FIG. 2

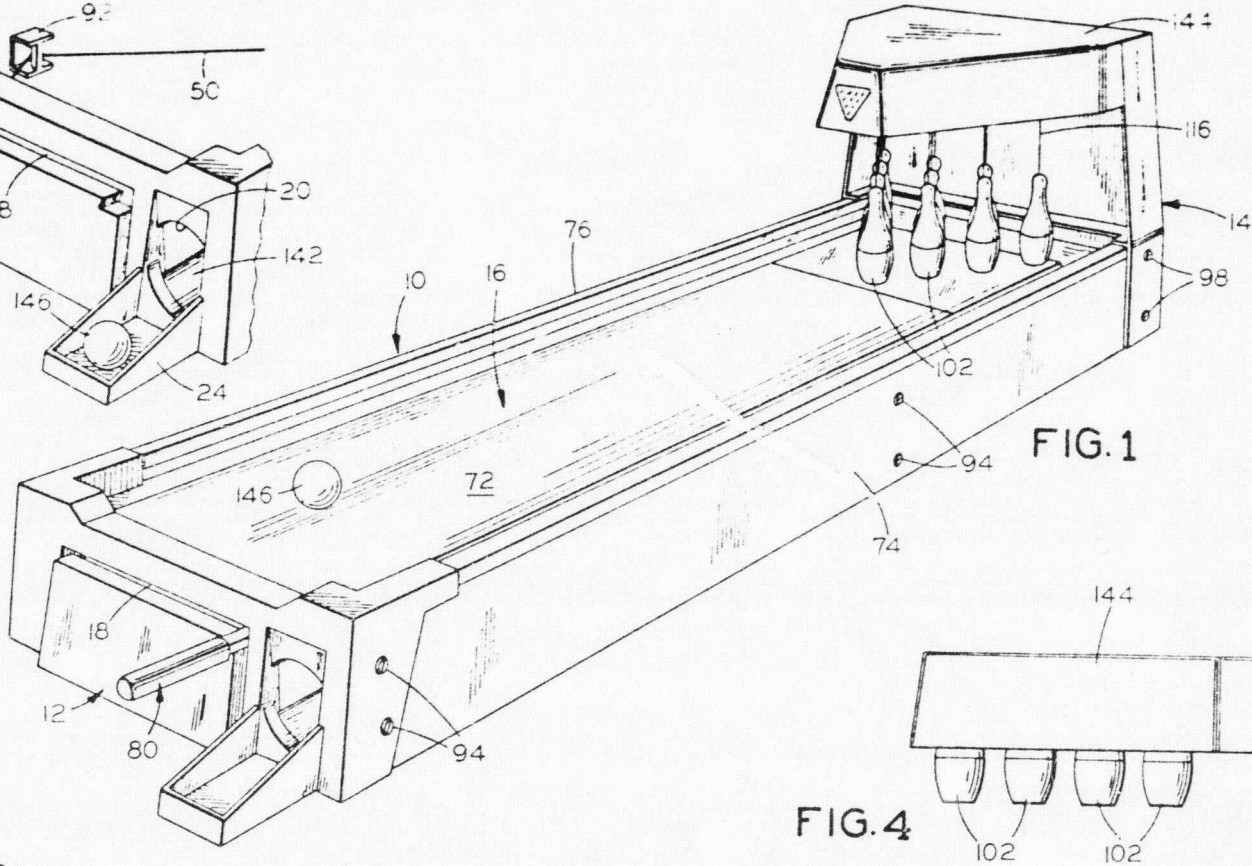


FIG. 1

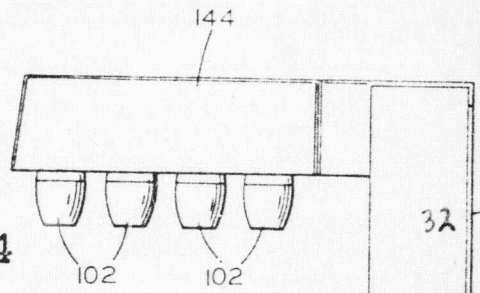


FIG. 4

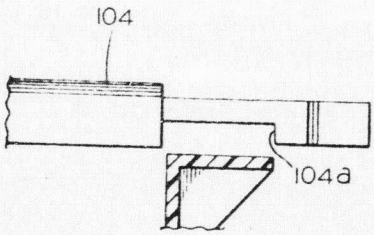
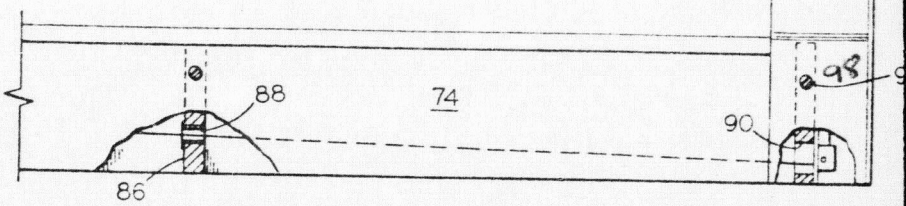


FIG. 3



Patented Feb 18 1975 Sheet 1 of 3 3,866,691

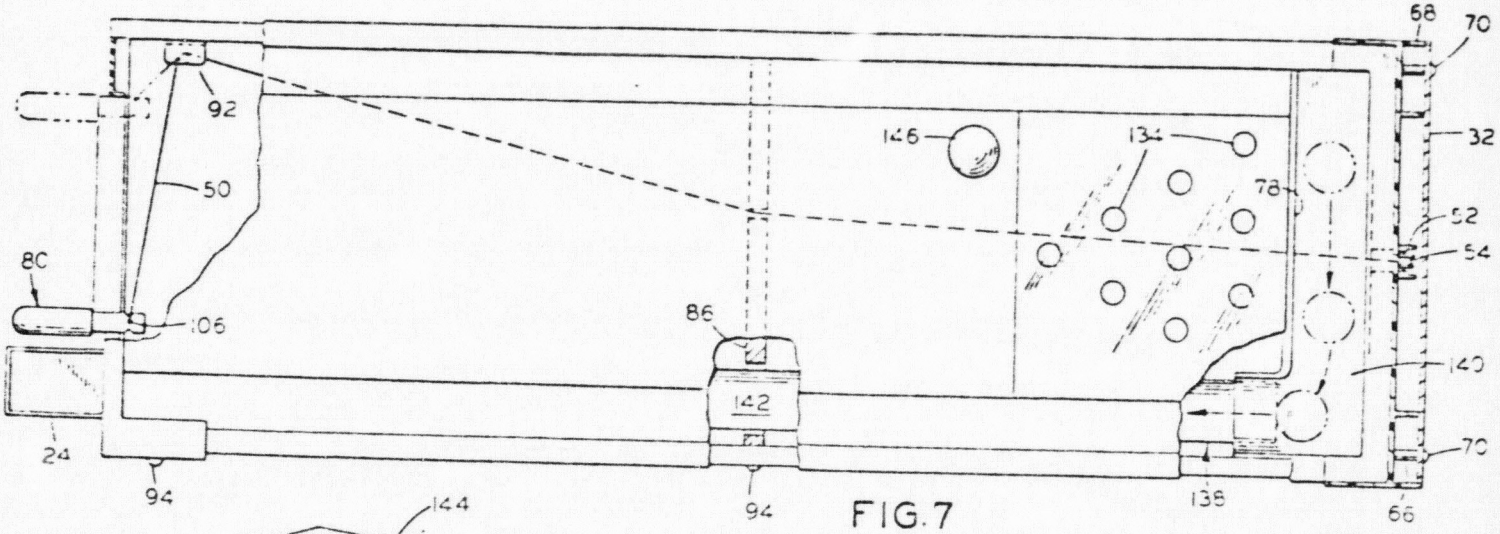


FIG. 7

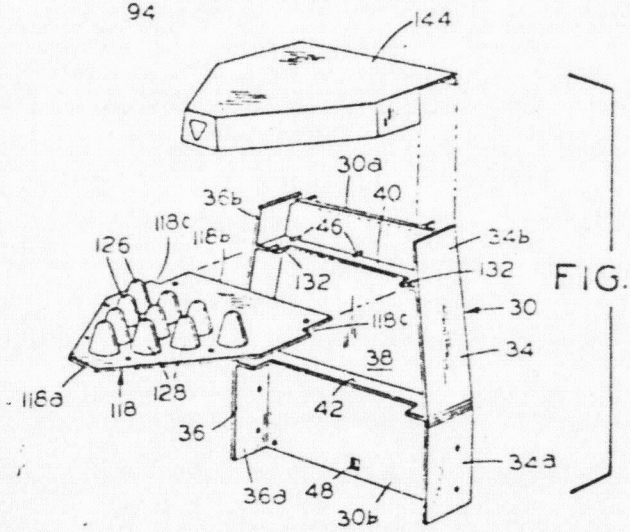


FIG. 6

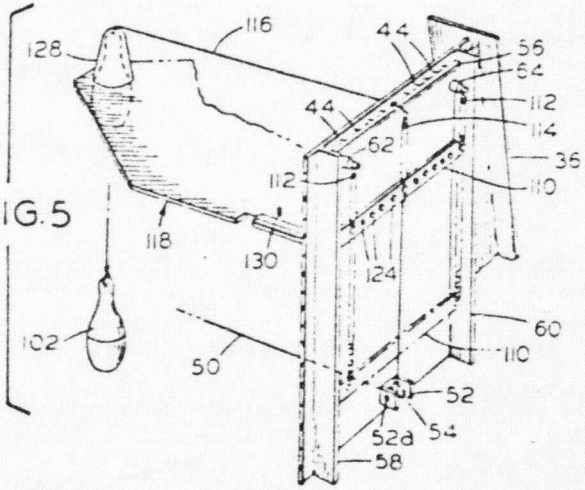
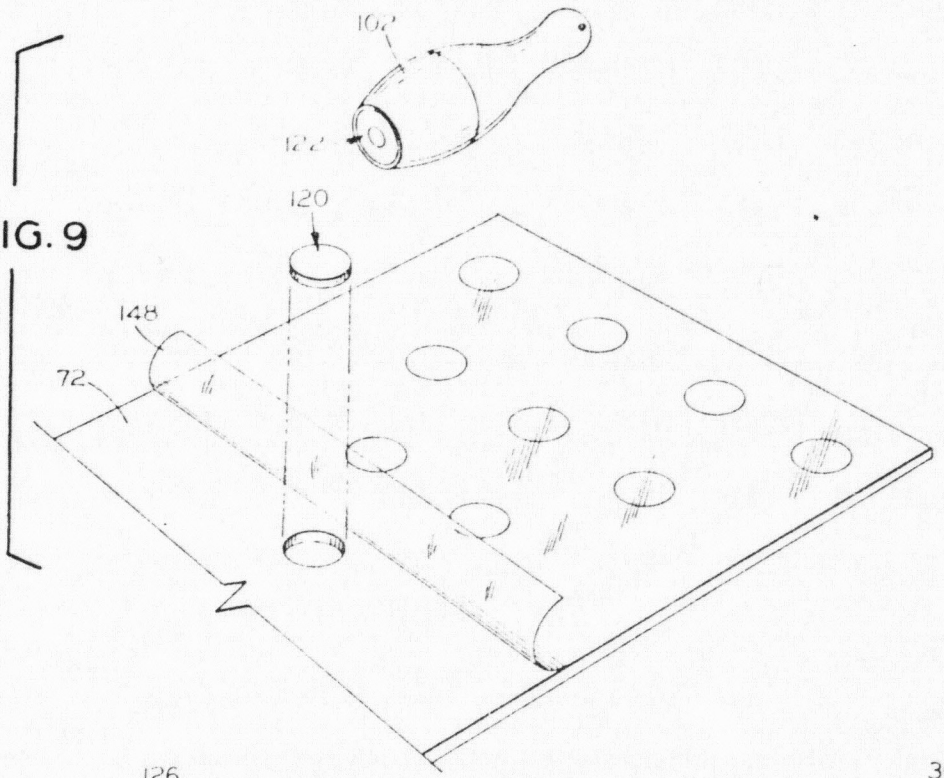


FIG. 5

FIG. 9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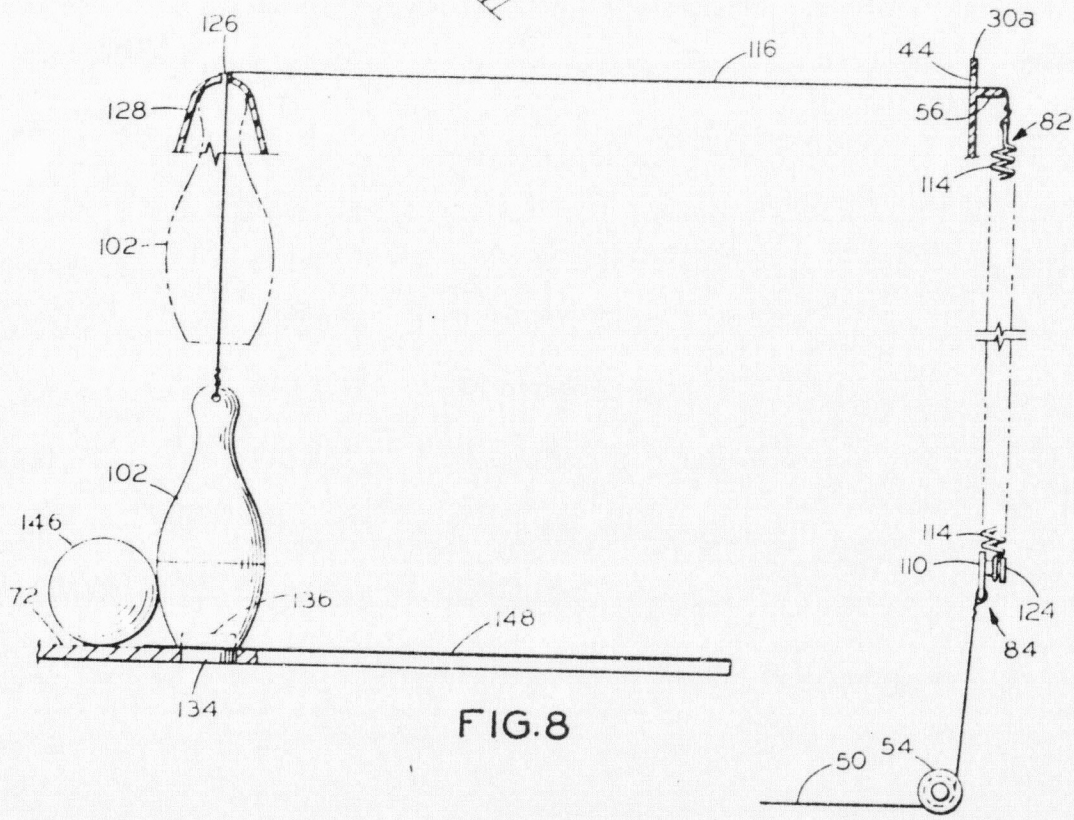
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FIG. 8

AUTOMATIC PINSETTING BOWLING GAME

BACKGROUND OF THE INVENTION

One of the sports which has down through the years become a favorite pastime for many is the sport of bowling. Particularly during the winter months when participation in many forms of outdoor sports is significantly restricted because of unfavorable weather conditions, interest turns to participating in indoor sports. This has annually led millions of people to visit the numerous bowling establishments which have been built throughout the United States. In addition, as the interest in bowling has become more widespread, this has led to bowling centers being constructed in other parts of the world. These centers in turn have also been well patronized by the people in those countries.

Here in the United States, practically each small town has its own bowling center. The latter during the winter months often functions as the focal point for the recreational activities of the people of the town. To this end, leagues are commonly formed at this center which provides men as well as women of all ages and of varying levels of experience with an opportunity to bowl competitively against their peers. Many of these leagues are sponsored by industrial companies for their employees while others are sponsored by religious and civic organizations as a type of recreational and social activity for their members.

Thus, it is not uncommon to find many families wherein most if not all of the adult and teenage members thereof engage in the sport of bowling. Generally, however, the younger members of these families, i.e., those below the age of teenagers are excluded from participating in the sport of bowling. More specifically, this is primarily because these children commonly do not have the ability required to play a game of bowling. Children generally do not possess sufficient strength to be able to roll a bowling ball down a bowling alley either with the accuracy or consistency necessary to strike the bowling pins. On the other hand, many of these same children have a strong interest in bowling which has been nurtured by having watched the older members of their family bowl or merely by listening to their parents and older brothers and sisters talk about the enjoyment they get from a game of bowling.

As a result, there have been numerous attempts made by various manufacturers to develop a bowling game adapted to be played primarily by children which possesses sufficient similarity to actually participating in the sport of bowling so as to appeal thereto. In this regard, the bowling games which have been developed by the prior art to date have generally been of two basic types. For example, one type of bowling game which is well-known and which is intended to be played primarily by young peopel consists of one or more bowling balls and ten bowling pins. To play the game, a suitable bowling lane is delineated on any level surface such as a floor, a sidewalk, a driveway, etc. The pins are placed at one end of this lane and the bowler positions himself at the other end of the lane and attempts to knock down the pins by rolling the ball along the level surface into engagement with the pins. In accordance with another type of bowling game which has been known previously, a game board is provided having a bowling lane outlined thereon. One end of the latter bowling lane is provided with markings identifying the location on which the bowling pins are supported. The bowler positions himself at the other end of the game board and attempts to knock down the pins by rolling a bowling ball into engagement therewith.

Neither of these two prior art forms of bowling games has found total acceptance with the children. This appears primarily to stem from the fact that both of these forms of bowling games lack much of the realism of participating in an actual game of bowling. For example, both of these games require the bowler to remove the pins he has knocked down and retrieve the ball before he can continue bowling. This is unlike actual bowling wherein each bowling lane at a bowling center is commonly equipped with an automatic pinsetter and an automatic ball return. In addition to these features which are lacking from the aforedescribed bowling games which detract from the realism of participating in an actual game of bowling, the sharp, crisp sound which is heard at a bowling alley when the bowling ball strikes the pins has not been duplicated in these games.

Therefore, in summary, although different bowling games have been developed heretofore in the prior art in an effort to simulate the conditions under which the sport of bowling is actually performed even to the extent of attempting to embody some form of automatic pin reset means therein, the results heretodate have not been entirely satisfactory. Thus, there has existed a need to provide a bowling game adapted particularly to be played by young people, etc., who are unable to participate in the actual sport of bowling, and which possesses as much of the realism of the conditions under which an actual game of bowling is bowled as possible.

Accordingly, it is an object of the present invention to provide a novel and improved bowling game which is portable and self-contained, and which embodies structure that simulates the construction of a bowling lane at a bowling center on which bowling is actually played.

It is also an object of the present invention to provide such a bowling game having automatic pinsetting means operable to cause any bowling pins, which are knocked out of position as a result of being struck by the bowling ball, to be removed automatically from the playing surface of the bowling game.

It is a further object of the present invention to provide such a bowling game wherein the automatic pinsetting means also includes means capable of repositioning the bowling pins at the completion of bowling each frame of a game without necessitating the individual handling of any of the pins by the bowler.

Still another object of the present invention is to provide such a bowling game which includes automatic ball return means operable to cause the bowling ball after being rolled at the bowling pins to be automatically returned to a position wherein the ball is readily accessible to the bowler.

A further object of the present invention is to provide such a bowling game wherein when the bowling ball strikes the bowling pins the sound produced thereby is similar to the sound heard when the bowling pins are struck by a bowling ball during an actual game of bowling thereby adding realism to the bowling game.

Yet another object of the present invention is to provide such a bowling game wherein the manner in which the game is played as well as the type of ability required therefor are sufficiently similar to those encountered while playing an actual game of bowling as to make the

playing of the subject bowling game enjoyable for young people as well as adults

Yet still another object of the present invention is to provide such a bowling game which is relatively inexpensive to manufacture, relatively easy to assemble, yet is characterized by the fact that it is sufficiently durable to withstand long and arduous hours of play by young people.

SUMMARY OF THE INVENTION

It has now been found that the foregoing and related objects can be readily attained in an automatic pinsetting bowling game which includes a housing assembly, a plurality of bowling pin-like members, reset means operatively connected to the bowling pin-like members, and control means for actuating the reset means. The housing assembly includes a front housing, a rear housing, and a longitudinally extending, substantially planar playing surface which interconnects the front and rear housings. The playing surface is configured in the form of a bowling lane, and has a plurality of first magnetic means, which are arranged in a triangular shape cluster, positioned adjacent the end of the playing surface which is connected to the rear housing. Each of the bowling pin-like members is provided with second magnetic means adapted to co-operate with one of the plurality of first magnetic means when placed in engagement therewith whereby through the magnetic attraction which exists therebetween, each of the bowling pin-like members is maintained in a preselected position on the playing surface. The reset means includes a plurality of cord-like members, at least a corresponding number of biasing means and a movably mounted support brace. Each of the cord-like members is attached at one end to one of the bowling pin-like members and at the other end to one of the biasing means. The other end of each of the biasing means is attached to the support brace whereby when the support brace is in a first position substantially all of the biasing means are relaxed and all of the bowling pin-like members rest on the playing surface, and when the support brace is in a second position, the biasing means are extended so that if the magnetic attraction between the first magnetic means and the second magnetic means of one or more of the bowling pin-like members is weakened beyond a predetermined level, the latter members are caused to be lifted from the playing surface by the biasing means. The control means, which is mounted so as to be externally accessible, is operable to move the support brace between the first and second positions thereof.

In accordance with the preferred embodiment of the invention, the bowling game includes ten bowling pins, each of which has a magnet mounted on its base, the latter magnets comprising the aforedescribed second magnetic means. The first magnetic means comprises ten magnets which are imbedded in the playing surface whereby to be equally spaced in four rows of one, two, three and four magnets respectively. The polarity and strength of the magnets is selected to be such that when one of the magnets of the second magnetic means is permitted to move adjacent to one of the magnets of the first magnetic means, sufficient magnetic attraction is provided therebetween to cause the bowling pin to be pulled into engagement with the playing surface, i.e., so that the base of the bowling pin on which the magnet is mounted overlies one of the ten magnets imbedded in the playing surface. Moreover, the rear housing preferably includes a support member having ten cone shaped recesses formed therein, each suitably dimensioned to be capable of receiving therein the head of one of the bowling pins. The reset means in accord with the preferred form of the invention includes an elongated support brace which is supported on the rear housing whereby to be movable relative thereto. The biasing means comprises twelve springs each of which has one end attached to the support brace whereby the springs are all positioned in a single row. The outer spring located at either end of the row thereof has its other end suitably attached to a portion of the rear housing whereby these two springs perform a stabilizing function. The other ten springs each have their other end attached by one of the cord-like members which preferably comprises a piece of string of suitable length, to the head of one of the 10 bowling pins. The strings which interconnect the springs to the heads of the bowling pins are each passed through a suitable opening provided in a corresponding one of the cone shaped recesses whereby by applying a pulling force on the end of each of the strings which is attached to the springs, the bowling pins can be caused to be drawn into the cone shaped recesses. The control means includes a handle which is mounted so as to be externally accessible at the front of the bowling game, and so as to be movable between a reset position and a playing position. The handle in turn is connected to a support brace by means of a suitable length of string which has one end thereof attached to the handle while the other end thereof is attached substantially at the midpoint of the support brace. When the handle is moved to the reset position, the springs which are connected to the bowling pins are relaxed whereby to enable the pins under the influence of gravity to drop to a position slightly spaced from the playing surface whereupon through magnetic attraction the bowling pins are pulled into predetermined locations on the playing surface. Thereafter, the handle is moved to the playing position whereby all the springs are caused to be extended. However, the upward biasing force imparted to each of the bowling pins by each of the springs is less than the force of the magnetic attraction between the magnets on the bowling pins and the magnets imbedded in the playing surface. As a result, the pins will continue to rest on the playing surface until struck by the bowling ball. When the latter occurs, it causes the magnetic attraction to be broken whereupon the bowling pin or pins which have been struck are drawn rapidly into the corresponding cone shaped recess by the force applied thereto by the spring which is attached thereto.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a perspective view of an automatic pinsetting bowling game constructed in accordance with the present invention, illustrating the handle and the bowling pins in the playing position;

FIG. 2 is a perspective view of the front housing of an automatic pinsetting bowling game constructed in accordance with the present invention, illustrating the handle in the reset position and the bowling ball returned to the ball tray;

FIG. 3 is a side elevational view of a portion of the handle of an automatic pinsetting bowling game constructed in accordance with the present invention, illus-

trating the means provided on a handle by which the handle is assembled to the front housing;

FIG. 4 is a side elevational view of a portion of an automatic pinsetting bowling game constructed in accordance with the present invention, illustrated with parts broken away for clarity of illustration;

FIG. 5 is a partial schematic perspective view of the reset means of an automatic pinsetting bowling game constructed in accordance with the present invention;

FIG. 6 is an exploded view of the housing member and cone support of an automatic pinsetting bowling game constructed in accordance with the present invention;

FIG. 7 is a top plan view of a portion of an automatic pinsetting bowling game with parts broken away for clarity of illustration, illustrating the automatic ball return means thereof;

FIG. 8 is a schematic diagram of the reset means of an automatic pinsetting bowling game constructed in accordance with the present invention, illustrating in solid lines the position of a bowling pin before being struck by a bowling ball and in dotted lines the position of a bowling pin after being struck by the bowling ball; and

FIG. 9 is an exploded view of the first and second magnetic means of an automatic pinsetting bowling game constructed in accordance with the present invention.

DETAILED DESCRIPTION OF THE ILLUSTRATED EMBODIMENT

Referring now to the drawings and more particularly FIG. 1 thereof, there is illustrated therein an automatic pinsetting bowling game, generally designated by reference numeral 10, constructed in accordance with the present invention. The bowling game 10 includes a front housing 12, a rear housing 14, and a longitudinally extending, substantially level playing surface means, generally designated by reference numeral 16, which is connected at its opposite ends to the front and rear housings 12 and 14, respectively. The front housing 12 comprises a rectangular shaped member which has formed therein a longitudinal slot 18 having a preselected length and which is operable for a purpose yet to be described. Adjacent one side edge of the housing 12 there is also formed therein an opening 20 which is suitably located so as to be spaced from the aforedescribed slot 18. Below the opening 20 there is provided a slot (not shown) of relatively short length which is suitably dimensioned so as to permit a portion of the ball return tray 24 to be received therein for purposes of retaining the tray 24 in mounted relation on the front housing 12 to which further reference will be had hereinafter. In accord with the illustrated embodiment of the invention the front housing 12 preferably has formed integrally therewith on the inner surface thereof one or more longitudinally extending rib-like members (not shown) with one or more transversely extending rib-like members (not shown). The rib-like members serve to provide the front housing 12 with additional strength.

The rear housing 14 includes a housing member 30 which has a substantially H-shaped configuration, and a rear cover 32 which is detachably mounted to the member 30. The member 30 is comprised of a pair of side portions 34 and 36 that are interconnected by means of a wall portion 38. The latter portion 38 is secured to the side portions 34 and 36 intermediate the ends of the latter for a purpose which will become apparent subsequently. In accord with the illustrated embodiment of the invention, the top 30*a* of the housing portion 30 is of a lesser width than the base 30*b* thereof. Accordingly, the side portions 34 and 36 are configured so as to correspond to the shape of the housing member 30. To this end, each of the side portions 34 and 36 is provided with a substantially planar portion 34*a* and 36*a*, respectively, and a portion 34*b* and 36*b*, respectively which diverges inwardly. Intermediate the length of the housing assembly 30 there are provided a pair of substantially U-shaped shelf-like members 40 and 42. The shelf-like members 40 and 42, which may be formed either as integral parts of the housing 30 or as separate parts which are suitably affixed to the housing member 30, are located in spaced relation relative to each other. The shelf-like member 40 is positioned inwardly a predetermined distance from the top 30*a* of housing member 30 while shelf-like member 42 is located at the point where the side edges of housing member 30 begin to diverge inwardly. Each of the shelf-like members 40 and 42 performs the dual functions of providing added rigidity to the rear housing 14 as well as serving as a support member in a manner which will be described more fully subsequently.

With further reference to the construction of the housing member 30, the latter is provided adjacent the top 30*a* thereof with a row of ten holes 44. The holes 44 are formed in the housing member 30 so as to be equally spaced relative to each other and so that the holes 44 located at the outer ends of the row are substantially equally spaced inwardly from the corresponding side edge of the housing member 30. In addition, housing member 30 is provided with three equally spaced bosses 46 which project outwardly from the inner surface of the housing member 30 in slightly spaced relation to the shelf-like member 40. The bosses 46 cooperate with the shelf-like member 40 to assist the latter in providing the previously mentioned support function thereof. Adjacent the base 30*b* of the housing member 30 on the inner surface thereof there is provided a slot 48 which is suitably dimensioned so as to enable a cord-like member such as a string or cord 50 to be passed therethrough for a purpose yet to be described. On the outer surface of the housing member 30 in juxtaposed relation to the slot 48 there is preferably provided a pulley support 52. The pulley support 52 provides a support for a pulley 54 around which the string 50 is made to pass. The pulley 54 is provided at each end thereof with an outwardly extending stub shaft which is received in a corresponding of a pair of suitably dimensioned apertures 52*a* which are provided for this purpose in the pulley support 52 whereby to enable the pulley 54 to be retained on the latter support 52.

The housing member 30 is also provided on the outer surface thereof in slightly spaced relation below the row of holes 44 with a horizontally extending ledge 56, the latter being viewed with reference to the illustration thereof in the drawings. Connected to the ledge 56 at either end thereof is a pair of vertically extending ribs 58 and 60. As will be described more fully hereinafter, the ledge 56 as well as the ribs 58 and 60 function as a form of alignment and guide means. Inwardly of the ribs 58 and 60 and in slightly spaced relation below the ledge 56 there is provided a first pair of posts 62 and

64. A second pair of posts 66 and 68 are provided on the outer surface of the housing member 30 adjacent to the base 30*b* thereof and spaced outwardly of the ribs 58 and 60. Each of the posts 66 and 68 is provided with an internally threaded aperture which is capable of receiving therein a threaded fastener 70 in threaded engagement therewith thereby to provide a means for securing the rear cover 32 to the posts 66 and 68 with the rear cover 32 being spaced from the outer surface of the housing member 30 whereby to provide a space therebetween for a purpose which will be described hereinafter.

Consideration will now be given to a description of the playing surface means 16 which interconnects the front housing 12 and the rear housing 14. The playing surface means 16 is comprised of a horizontally extending flat surface 72 which comprises the bowling lane of the bowling game 10, a pair of side panels 74 and 76 which depend from the surface 72, and a rear end wall 78 which extends between the side panels 74 and 76 along the rear edge of the surface 72 and which is suitably secured thereto through the use of any suitable conventional securing means. The side panels 74 and 76 function as the external side walls for the bowling game 10. In addition, the side panels 74 and 76 serve to provide concealment for a portion of the control means 80 which is operable to actuate the reset means 82 of the automatic pinsetting means, generally designated by reference numeral 84. In accord with the illustrated embodiment of the invention, a cross brace 86 is preferably employed for purposes of providing added rigidity to the bowling game 10. The cross brace 86 extends between the side panels 74 and 76 at a point intermediate the length thereof and is suitably connected thereto by any conventional connecting means such as a plurality of suitable threaded fasteners. An aperture 88 is suitably located in the cross brace 86 so as to permit the string 50 to be passed therethrough. In this connection, a brass eyelet is preferably positioned in the aforementioned aperture 88 through which the string 50 passes whereby to provide a bearing surface therefor. In addition, the rear end wall 78 is also provided with a suitable opening 90 to permit the string 50 to be passed therethrough. A string guide 92 is mounted by any suitable means on the inner surface of the side panel 74 adjacent the front edge thereof as a further aligning and guiding means for the string 50. The front edge portion of the playing surface means 16 is connected to the front housing 12 by means of a plurality of fasteners 94 which pass through suitable openings (not shown) provided for this purpose in the sides of the front housing 12 and are secured in suitable threaded openings (not shown) provided for this purpose in the side panels 74 and 76 whereby the front edge of the bowling lane surface 72 is positioned substantially in abutting engagement with the inner surface of the front housing 12. The rear end wall 78 of the playing surface means 16 is similarly secured to the rear housing 14 by means of a plurality of threaded fasteners 98 which pass through suitable openings (not shown) provided for this purpose in the side portions 34 and 36, and are threaded into suitable openings (not shown) provided for this purpose in the side panels 74 and 76 in slightly spaced relation to the inner surface of the rear end wall 78. When so assembled, the rear end wall is substantially in abutting engagement with the inner surface of the housing member 30 with the bowling surface 72 positioned adjacent the shelf-like member 42 and with the opening 90 in the rear end wall 78 aligned with the slot 48 in the housing member 30 so as to permit the string 50 to be passed therethrough.

In accordance with the present invention, bowling game 10 is provided with a novel and improved automatic pinsetting means 84 which includes a reset means 82 and a control means 80. The reset means 82 is operable when in a first condition to cause the bowling pins 102 as they are struck by a bowling ball which is rolled into engagement therewith to be automatically rapidly removed from the bowling surface 72, and when in a second condition to cause the bowling pins 102 to be repositioned in the proper locations on the bowling surface 72. The control means 80 is operatively connected to the reset means 82 and is operable to cause the reset means 82 to be placed in either of the aforementioned first or second conditions.

Considering first the structure which comprises the control means 80, the latter means 80 includes a handle 104 which is positionable in the slot 18 formed in the front housing 12 so as to be movable therein. The handle 104 intermediate the ends thereof is provided with a cutout portion 104*a* which is suitably dimensioned so that the handle 104 at the portion 104*a* has a thickness which is less than the width of slot 18 thereby enabling the portion 104*a* of the handle 104 to be slid in the slot 18 while the sides of the cutout portion 104*a* function as stop means which serve as a means of retaining the handle 104 in the slot 18 once the handle 104 has been positioned therein. At its inner end, as viewed with the handle 104 positioned in the slot 18, the handle 104 is provided with a hole 106 which is suitably dimensioned to receive therethrough one end of the string 50 thereby enabling one end of the string 50 to be tied to the handle 104. From the handle 104, the string 50 as has been mentioned previously hereinabove extends through the string guide 92, the aperture 88 in cross brace 86, the opening 90 in rear end wall 78, through the slot 48 in housing member 30, around the pulley 54, and through an opening (not shown) provided for this purpose in a spring support brace 110 to which the other end of string 50 is tied.

Insofar as concerns the reset means 84, the latter includes the aforementioned spring support brace 110, a pair of stabilizing springs 112, 10 biasing springs 114, 10 pieces of cord 116, a cone support 118, and first and second magnetic means 120 and 122, respectively. The spring support brace 110 is provided with 12 pins 124 which are arranged in a row so as to be substantially equally spaced along the length of the spring support brace 110. The two stabilizing springs 112 each have one end thereof attached to the outermost pins 124 located at either end of the row thereof. The other ends of the stabilizing springs 112 are attached to the pair of posts 62 and 64, respectively. Each of the ten biasing springs 114 has one of its ends attached to a corresponding one of the remaining ones of the pins 124 which are provided for this purpose on the spring support brace 110. The other end of each of the biasing springs 114 is tied to one end of a corresponding one of the cords 116. Each of the cords 116 is passed over the ledge 56 and through one of the row of holes 44. With the cone support 118 secured to the shelf-like member 40 in a manner yet to be described, each of the cords 116 after passing through a corresponding one of

the holes **44** is passed through an opening **126** provided for this purpose in each of the cone-like recesses **128** which are formed in the cone support **118**, and so as to be located substantially at the center of each of the cone-like recesses **128**. Thereafter, the other end of each of the cords **116** is attached to the head of a corresponding one of the bowling pins **120** through a hole (not shown) provided for this purpose therein.

Referring more particularly to the construction of the cone support **118** and manner in which it is secured to the shelf-like member **40**, the cone support **118** has a triangular shaped portion **118***a* in which the cone shaped recesses **128** are formed. The cone support **118** has a rear portion **118***b* the width of which corresponds to the distance by which the side portions **34** and **36** are spaced apart. In addition, each corner of the rear portion **118***b* is provided with a notch **118***c*. The latter notches **118***c* are suitably dimensioned whereby to enable the cone support **118** to be inserted between the three bosses **46** and the shelf-like member **40**, i.e., below the three bosses **46** and on the shelf-like member **40**. When the cone support **118** is so positioned, the notches **118***c* are in abutting engagement with the side portions **34** and **36**. The cone support **118** is fixedly secured to the housing member **30** by a pair of threaded fasteners **130** which are passed through a pair of slots **132** formed for this purpose in the shelf-like member **40** and are threaded into suitable openings (not shown) provided for this purpose in the cone support **118**. By moving the fasteners **130** in the slots **132** before the fasteners **130** are tightened, the position of the rear portion **118***b* of the cone support **118** relative to the inner surface of the housing member **30** can be adjusted.

Continuing with the description of the reset means **84**, the first magnetic means **120** comprises ten individual magnets **134** each preferably being of equal strength, which are suitably supported on the bowling surface **72** such as by being imbedded therein. The ten magnets **134** are arranged on the surface **72** in four rows having one, two, three and four magnets, respectively, in each row. Moreover, the magnets **134** are arranged so as to be equally spaced relative to each other and so as to be centered with respect to the side edges of the bowling surface **72** adjacent the rear housing **14**. The second magnetic means **122** of the reset means **84** comprises ten magnets **136**. Each of the ten magnets **136**, which preferably are each of equal strength, is mounted by any suitable means on the base of a corresponding one of the ten bowling pins **102**. The magnets **134** and **136** are selected so that magnetic attraction will exist therebetween when the magnets **136** on the bases of the bowling pins **102** are brought into juxtaposed relation with the magnets **134** imbedded in bowling surface **72**. In addition, the magnets **134** and **136** are further selected so that the strength thereof is such that the magnetic attraction therebetween is sufficiently strong to resist the upward biasing force being applied to a corresponding one of the bowling pins **102** as will be referred to more fully hereinafter in connection with the description of the mode of operation of the bowling game **10** and more specifically the reset means **84** thereof.

In accord with the illustrated embodiment of the invention, the bowling game **10** is provided with an automatic ball return means **138**. The ball return means **138** includes the ball tray **24** to which reference was had previously hereinabove, a ball return chute **140** and a ball run **142**. As depicted in the drawings, the ball return chute **140** and the ball run **142** are each generally semicircular in shape. The ball return chute **140** is supported on the under side of the bowling surface **72** so as to extend transversely thereof and so as to be located adjacent the rear edge of the bowling surface **72** where the latter is affixed to the rear housing **14**. The ball run **142** is supported along the under side of the bowling surface **72** adjacent one side edge thereof, and so as to extend the length of the bowling surface **72**. One end of the ball run **142** suitably connects with the ball return chute **140** while the other end of the ball run **142** suitably connects with the ball tray **24**. Accordingly, the automatic ball return means **138** is operable to cause a bowling ball which is rolled the length of the bowling surface **72**, from the front to the rear thereof, to be received in the ball return chute **140** when the ball reaches the rear portion of the bowling surface **72**. The ball then under the influence of gravity rolls the length of the ball return chute **140** and into the ball run **142**. Thereafter, the ball rolls the length of the ball run **142** and is deposited in the ball tray **24** where the ball is readily accessible to the player for use thereby once again.

Bowling game **10** is constructed in such a manner as to be easily assembled. In this regard, as has been set forth previously above, the front housing **12** is fastened to one end of the playing surface means **16** by means of suitable fastening means. The handle **104** is then inserted into the slot **18**. With the handle **104** so positioned, the string **50** is passed through the opening **90**, the aperture **88** in cross brace **86**, and then through the string guide **92** and is tied to the handle **104**. Next the ball run **142** is mounted under the playing surface **72** so that one end thereof rests on the ball return chute **140** and so that the other end of the ball end **142** rests on the top of the lip of the ball tray **24**, the latter being supported on the front housing **12** adjacent the opening **20** formed therein. Now, the cone support **118** is affixed to the housing member **30** by being inserted under the three bosses **46** so that the cone support **118** rests on the shelf-like member **40**, and preferably fastened in place through the use of suitable fastening means. Then, each of the bowling pins **102** is assembled to the housing member **30**. This is accomplished by tying one end of a corresponding one of the cords **116** to each of the bowling pins **102**. The cords **116** are cut to different lengths corresponding to the varying differences by which the cone support recesses **128** are spaced from the inner surface of the housing member **30**. The other ends of the cord **116** are passed through the openings **126** in the cone shaped recesses **128**, then through the holes **44** and over the ledge **56**, and are each tied to one end of a corresponding one of the biasing springs **114**. The other end of each of the springs **114** is attached to the spring support brace **110**, the latter being positioned between the ribs **58** and **60** adjacent the rear surface of the housing member **30**. Thereafter, the two stabilizing springs **112**, each of which having one end affixed to the support brace **110**, is attached at its other end to the posts **62** and **64**, respectively. In accord with the illustrated embodiment of the invention, a top cover **144** is preferably positioned over the cone support **118**. More specifically, the top cover **144** is fastened to the cone support **118** through the use of suitable fastening means which pass through openings provided for this purpose in the cone support **118**

and are threadedly engaged in suitably threaded recesses provided for this purpose in the top cover **144.** To complete the assembly of the bowling game **10,** the free end of the string **50** is passed through the slot **48** in the housing member **30** and around the pulley **54.** The rear housing **14** is then affixed to the playing surface means **16** by suitable fastening means. Thereafter, the string **50** is passed through the hole **108** provided for this purpose in the support brace **110** and is tied thereto. Finally, the rear cover **32** is secured to the housing member **30** through the use of suitable threaded fasteners which are passed through the rear cover **32** and are received in the threaded posts **66** and **68.**

Turning now to a description of the mode of operation of the bowling game **10,** the handle **104** is moved to the play position, i.e., to the extreme right as viewed with reference to FIG. **1** of the drawings. In this position of the handle **104,** the bowling pins **102** rest on the playing surface **72,** and are retained thereat by virtue of the magnetic attraction which is established between the magnets **134** which are imbedded in the playing surface **72** and the magnets **136** supported on the base of the bowling pins **102.** The player who positions himself at the front end of the bowling game **10** then rolls a bowling ball **146** along the playing surface **72** towards the pins **102.** The ball is returned to the ball tray **24** by the automatic ball return means **138.** Any bowling pins **102** which have been struck by the bowling ball are lifted into the cone shaped recesses **128** by virtue of the operation of the biasing springs **114.** The bowling ball is then rolled for a second time at the pins **102.** Again the ball is automatically returned to the ball tray **24,** and any more pins **102** which have been struck by the ball rise into the cone shaped recesses **128.** The striking of the pins **102** by the ball is sufficient to break the magnetic attraction between the magnets **134** and **136.** This completes the bowling of one frame of a game. Accordingly, the handle **104** is moved to the reset position, i.e., to the extreme left as viewed with reference to FIG. **1** of the drawings. This permits the pins **102** to drop under the influence of gravity to the playing surface **72** enabling magnetic attraction between the magnets **136** on the pins **102** and the magnets **134** on the playing surface **72** to be once again established. The handle **104** is then returned to the play position in preparation for the player bowling the second frame of the game. This procedure is continued until the game is completed in the same manner in which an actual game is played.

Although only one embodiment of an automatic pinsetting bowling game constructed in accordance with the present invention has been shown in the drawings and described hereinabove, it is to be understood that modifications in the construction thereof may be made thereto by those skilled in the art without departing from the essence of the invention. In this connection, some of the modifications which can be made in the bowling game **10** have been alluded to hereinabove while others will become readily apparent to those skilled in the art when exposed to the present description and illustration of the construction of the bowling game **10.** For example, as illustrated in FIGS. **1** and **9** of the drawings, the magnets **134** which are imbedded in the playing surface **72** are preferably covered by a transparent sheet of suitable material **148** which functions to assist in retaining the magnets **134** suitably positioned. However, it is, of course, to be understood that some form of other means could equally well be employed for purposes of retaining the magnets **134** in supported relation on the playing surface **72.** Also, although in accord with the preferred embodiment of the invention most of the various elements which comprise the bowling game **10** are formed of suitable wear-resistant plastic material, it is to be understood that these components of the bowling game **10** could be made of other materials without departing from the essence of the invention. Furthermore, as noted above, it has been found desirable to employ ten biasing springs **114** and two stabilizing springs **112** each of which has the same spring characteristics. The use of the two stabilizing springs in this manner has been found effective to impart a desirable stabilizing effect with regard to the movement of the spring support brace **110.** However, it is, of course, to be understood that if so desired some other number of stabilizing springs could be employed for this purpose.

Thus, it can be seen that the present invention provides a novel and improved automatic pinsetting bowling game which is portable and self-contained, and which embodies structure that simulates the construction of a bowling lane at a bowling center at which actual bowling takes place. Moreover, the bowling game of the present invention is provided with automatic pinsetting means operable to cause any bowling pins, which are knocked out of position as a result of being struck by the bowling ball, to be removed automatically from the playing surface of the bowling game. Furthermore, in accord with the present invention a bowling game is provided wherein the automatic pinsetting means also includes means capable of repositioning the bowling pins at the completion of bowling each frame of a game without necessitating the individual handling of any of the pins by the player. The bowling game of the present invention includes automatic ball return means operable to cause the bowling ball after being rolled at the bowling pins to be automatically returned to a position wherein the ball is readily accessible to the player. In accordance with the present invention a bowling game has been provided wherein when the bowling ball strikes the bowling pins the sound produced thereby is similar to the sound heard when the bowling pins are struck by a bowling ball during an actual game of bowling thereby adding realism to the bowling game. Also, a bowling game in accord with the present invention has been provided wherein the manner in which the game is played as well as the type of ability required therefor are sufficiently similar to those encountered while playing an actual game of bowling as to make the playing of the subject bowling game enjoyable for young people as well as adults. Finally, the bowling game of the present invention is relatively inexpensive to manufacture, relatively easy to assemble, yet is characterized by the fact that it is sufficiently durable to withstand long and arduous hours of play by young people.

Having thus described the invention, I claim:

1. A bowling game adapted to be played by rolling a bowling ball into engagement with a plurality of bowling pins comprising:

a. a housing assembly including a front housing, a rear housing, and a longitudinally extending substantially planar playing surface having one end thereof connected to said front housing and the other end thereof connected to said rear housing;

b. a plurality of bowling pins supported on said housing assembly for movement into and out of engagement with said playing surface;

c. automatic pinsetting means including reset means having a first operating condition and a second operating condition, and control means operatively connected to said reset means;

d. said reset means including first magnetic means supported on said playing surface, second magnetic means supported on said bowling pins, a plurality of cord-like members each having one end thereof attached to a corresponding one of said plurality of bowling pins, biasing means including a plurality of resilient first members each having one end thereof secured to the other end of a corresponding one of said plurality of cord-like members, a support brace having the other end of each of said resilient first members attached thereto, and stabilizing means comprising a plurality of resilient second members having one end thereof affixed to said rear housing and the other end thereof connected to said support brace for supporting said support brace in spaced relation to said rear housing for movement relation thereto between a first position which corresponds to said first operating condition of said reset means and a second position which corresponds to the second operating condition of said reset means, said stabilizing means being further operable to stabilize the movement of said support brace in moving between said first and second position thereof; and

e. control means connected to said control brace and including manually operable means supported on said housing assembly so as to be externally accessible, said control means being operable in response to actuation of said manually operable means to cause said support brace to move between said first position thereof, wherein said plurality of resilient first members of said biasing means and said plurality of resilient second members of said stabilizing means are in an extended condition thereby placing said reset means in said first operating condition thereof and said second position of said support brace wherein said plurality of resilient first members of said biasing means and said plurality of resilient second members of said stabilizing means are in a substantially relaxed condition thereby placing said reset means in said second operating condition thereof.

2. The bowling game as set forth in claim **1** further comprising automatic ball return means operable to automatically return a bowling ball which is rolled along said playing surface to an externally accessible location at the front of the bowling game, said ball return means including a ball return chute supported on said rear housing, a ball run supported under said playing surface and having one end operatively connected to said ball return chute, and a ball tray supported on said front housing and being operatively connected to the other end of said ball run.

3. The bowling game as set forth in claim **1** wherein said plurality of bowling pins consists of ten bowling pins, said first magnetic means comprises ten magnets imbedded in said playing surface and arranged in equally spaced relation in four rows wherein one row contains one magnet, one row contains two magnets, one row contains three magnets and one row contains four magnets, and said second magnetic means comprises a magnet supported on the base of each of said ten bowling pins

4. The bowling game as set forth in claim **3** wherein said plurality of resilient first members of said biasing means comprises ten springs each having substantially the same spring characteristics.

5. The bowling game as set forth in claim **4** wherein said plurality of resilient second members of said stabilizing means comprises a pair of springs each being substantially identical to each of said ten springs of said biasing means.

6. The bowling game as set forth in claim **1** wherein said control means further includes a length of string having one end thereof attached to said spring support brace, and said manually operating means comprises a handle attached to the other end of said length and movable between a playing position to place said reset means in said first operating condition thereof and a reset position to place said reset means in said second operating condition thereof.

7. A bowling game adapted to be played by rolling a bowling ball into engagement with a plurality of bowling pins comprising:

a. a housing assembly including a front housing, a rear housing, and a longitudinally extending substantially planar playing surface having one end thereof connected to said front housing and the other end thereof connected to said rear housing;

b. a plurality of bowling pins supported on said housing assembly for movement between a first position wherein said plurality of bowling pins rest on said playing surface and a second position wherein said plurality of bowling pins are spaced from said playing surface;

c. pin reset means movable between a playing condition and a reset condition, said pin reset means including a plurality of first magnets supported on said playing surface in a predetermined arrangement, a plurality of second magnets comprising a magnet supported on each of said plurality of bowling pins and operable when brought into juxtaposed relation with said plurality of first magnets to effect a magnetic attraction therebetween, a plurality of cord-like members supported on said rear housing and each having one end thereof attached to a corresponding one of said plurality of cord-like members wherein a biasing force is capable of being imparted from said plurality of springs through said plurality of cord-like members to said plurality of bowling pins, a spring support brace having attached thereto the other ends of said plurality of springs, and stabilizing means comprising a plurality of resilient members having one end thereof affixed to said rear housing and the other end thereof connected to said spring support brace for supporting said spring support brace in spaced relation to said rear housing for movement relative thereto between a first position wherein said plurality of springs ae in an extended condition and a second position wherein said plurality of springs are in a relaxed condition, said stabilizing means being further operable to stabilize the movement of said spring support brace in moving between said first and second positions thereof; and

d. control means operatively connected to said spring support brace and including manually operable

means positioned on said front housing so as to be externally accessible and movable between a reset position wherein said spring support brace is in said second position thereof and said plurality of bowling pins rest on said playing surface, and a playing position wherein said spring support brace is in said first position thereof and said plurality of bowling pins are retained resting on said playing surface by the magnetic attraction which exists between said plurality of first magnets and said plurality of second magnets against the biasing force being imparted to said plurality of bowling pins by said plurality of springs.

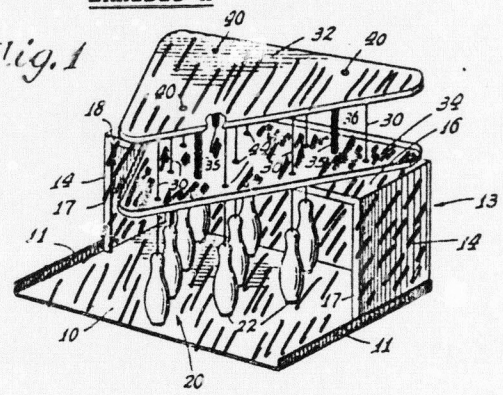
8. The bowling game as set forth in claim 7 further comprising automatic ball return means operable to automatically return a bowling ball which is rolled along said playing surface to an externally accessible location at the front of the bowling game, said ball return means including a ball return chute supported on said rear housing, a ball run supported under said playing surface and having one end operatively connected to said ball return chute, and a ball tray supported on said front h[illegible]ing and being operatively connected to the [illegible] of said ball run.

* * * * *

Th. Game of the Cohn Patent 158

EXHIBIT H

Fig. 1



The Allegedly Infringing Game

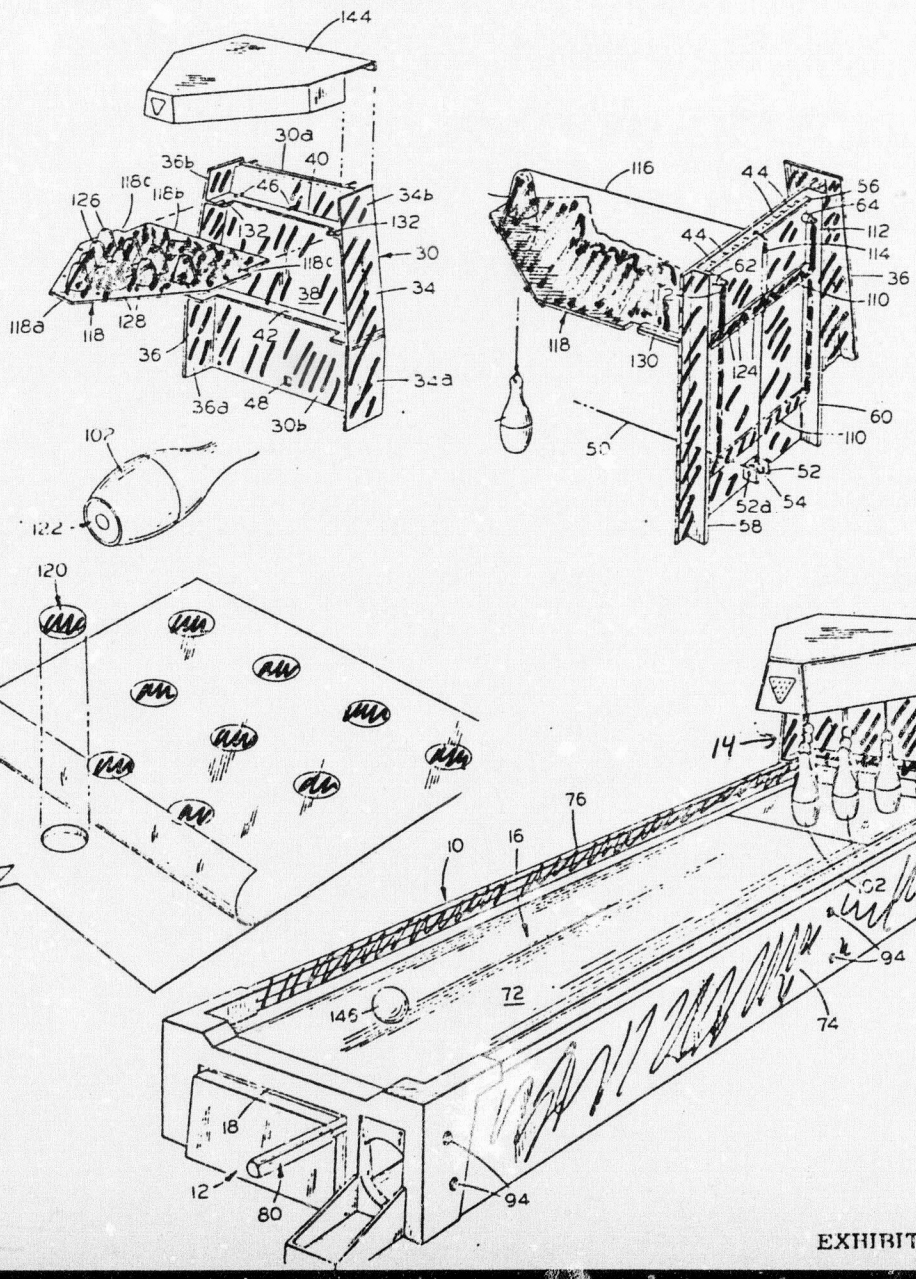


FIG. 1

EXHIBIT H

FROM CLAIM 1 OF [illegible] PATENT IN SUIT		COLECO U.S. PATENT NO. 3,866,691
	159	
a. a toy bowling game comprising		Fig. 1
b. a flat substantially rectangular shaped metal base plate of magnetic material having an extensive upper surface		72 in Fig. 1 and Fig. 9 and 120 in Fig. 9
c. said base plate having upstanding flanges integral with the opposite side edges thereof		74 and 76 in Fig. 1
d. an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on said base plate		14 in Fig. 1, also 34, 36, and 40 in Fig. 6
e. a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame		118 in Fig. 6
f. a supporting member positioned above said guide plate and spaced therefrom		110 in Fig. 5
g. said supporting member being mounted for movement relative to said base plate		110 in Fig. 5 and Col. 3 lines 31 to 34
h. spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate		Springs 112 in Fig. 5
i. a bowling pin carried by said supporting member and having a permanent magnet provided with north and south poles disposed [illegible] to enable the pin to be [illegible] to and supported on said base plate in upright position		102 and 136 in Fig. 8
j. an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate		116 and 114 in Fig. 8
k. said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the magnet on the bowling pin to contact the metal base plate		Fig. 8, Col. 3, lines 37 to 51, Col. 4, lines 34 to 53
l. said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnet resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position		Fig. 8
m. and said spring means urging said supporting member to automatically return and retain it in normal spaced relation above said base plate.		112 in Fig. 5

BEST COPY AVAILABLE

FROM CLAIM 4 OF JOHN PATENT IN SUIT	160	COLECO U.S. PATENT NO. 3,866,691
a. a toy bowling game comprising		Fig. 1
b. a flat substantially rectangular shaped metal base plate having an extensive upper surface		72 in Fig. 1 and Fig. 9 and 120 in Fig. 9
c. said base plate having upstanding flanges integral with the opposite side edges thereof		74 and 76 in Fig. 1
d. an inverted U-shaped frame extending over said base plate in spaced relation thereto and having the lower opposite edges thereof in engagement with said flanges and secured to said base plate		14 in Fig. 1 also 34, 36 and 40 in Fig. 6
e. a substantially triangular shaped guide plate having relatively spaced openings therein mounted on said U-shaped frame		118 in Fig. 6
f. a supporting member positioned above said guide plate and spaced therefrom		110 in Fig. 5
g. said supporting member being mounted for movement relative to said base plate		110 in Fig. 5 and Col. 3, line 31 to 34
h. spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate		Springs 112 in Fig. 5
i. a bowling pin carried by said supporting member		102 in in Fig. 9
j. magnetic means for attracting the pin to the base plate to enable the pin to be supported on said base plate in upright position		136 in Fig. 8.
k. an elastic string secured to the bowling pin and to said supporting member to position the bowling pin whereby the latter is lowered at a predetermined location on said base plate		116 and 114 in Fig. 8
l. said string having a length and strength such that when only slightly extended it will maintain the bowling pin raised above and out of contact with said base plate and when more fully extended will permit the base of the bowling pin to contact the metal base plate		Fig. 8- Col. 3, Lines 37 to 51, Col. 4, Lines 34 to 53
m. said pin being supported thereby in upright position on said base plate when said supporting member is depressed toward said base plate and said magnetic means resisting removal of the pin from the base plate by said string when said supporting member is returned to its original position		Fig. 8
n. and said spring means urging said supporting member to automatically return and retain it in normal spaced relation [illegible]		112 in Fig. 5

EXHIBIT I

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

DAVID COHN,

Plaintiff,

-against-

COLECO INDUSTRIES, INC.,

Defendant.

75 Civ. 2077
(Judge Knapp)

----------x

DEPOSITION of DAVID COHN, taken before Morene B. Korenman, a Notary Public of the State of New York, held at the offices of Kenyon & Kenyon Reilly Carr & Chapin, Esqs., 59 Maiden Lane, New York, New York, on the 11th day of November 1975, at 1:30 p.m., pursuant to agreement.

BORAK REPORTING SERVICE, P.C.
CERTIFIED SHORTHAND REPORTERS
295 MADISON AVENUE
NEW YORK, N.Y. 10017

(212) 689-8080
NIGHT PHONES: (212) 475-1347
(516) 487-6474

EXHIBIT I

(The witness and counsel conferred off the record.)

MR. HELLER: The objection remains.

MR. MACKL[illegible]re you instructing the witness not to answer?

MR.HELLER: Yes. However, I have no objection to your eliciting the facts as to what Mr. Cohn considered to be his problem.

The substance of the attorney-client communications, I believe, are privileged.

BY MR. COSTAS:

Q Mr. Cohn, would you explain --

MR. HELLER: I believe you can get the facts you want.

MR. COSTAS: Thank you.

Q (continuing) Mr. Cohn, would you explain to us what you considered to be your problem?

A I knew a patent existed, that I had a patent on a bowling game.

I saw in Alexander's a picture of a game on a box and I saw the similarity between that and my patent. This was my problem, so I went to my patent attorney and I told him about it.

I bought a game and brought it to him.

Q A game which you never assembled?

A I didn't feel it was necessary.

Q Are there not or were there not at the same time other bowling games on the market?

A There may have been.

Q You never saw other bowling games on the market?

A I don't know. I may have.

Q Did you take any other games to Mr. March for the same problem?

A No.

Q Was this the only game that you took to Mr. March?

A Yes.

Q You indicated that earlier in time you felt that an Irwin Corporation was manufacturing a game that infringed your application?

A Yes.

Q W tever happened with respect to the Irwin Corporation game?

A I did nothing about it.

Q Was it still on the market?

A I saw it once and then I didn't see it any more.

Q After your patent was issued you did

nothing with respect to the Irwin Corporation?

A No.

Q No letter to them charging them with infringement?

A No.

Q Offering them a license?

A No, sir.

Q No contact whatsoever?

A None.

Q Did you ever contact any other manufacturer of bowling games?

A No.

Q Sometime in the latter part of 1973 you took this game that you purchased from Alexander's to Mr. March and indicated to him your problem, which was that you felt the Coleco game -- may I use the term "copied" your idea?

A Similarity.

MR. HELLER: I object. Mr. Cohn didn't say "copied." He said "similarity," I believe.

Q In what area did you believe it was similar?

A When I look at the drawings of my patent and I look at the Coleco box, there is a similarity between

the drawing and the illustration.

Q At no time have you assembled the Coleco game?

A No.

Q Do you know --

MR. HELLER: One moment.

(The witness and counsel conferred off the record.)

MR. HELLER: May we have the last two questions and answers, please?

(Record read.)

A Exception. In the last couple of weeks I assembled one for my attorneys.

(Discussion off the record.)

MR. HELLER: The parties have stipulated that testimony with regard to any matter which may have been subject to an attorney-client privilege will not constitute a waiver of that privilege with regard to the entire transaction, and objections on the basis of privilege may be retained with regard to the entire transaction with the exception of that which has been entered into the record.

MR. COSTAS: I would ask that the letter

MR. COSTAS: Please mark this letter of December 12, 1973 Defendant's Exhibit F.

(Copy of letter to Arthur March from Arthur E. Fournier dated December 12, 1973 marked Defendant's Exhibit F for identification, as of this date.)

BY MR. COSTAS:

Q Mr. Cohn, following your contact with Mr. March in late 1973 in which you told him your problem, what happened?

A I don't understand what you mean, "what happened?"

Q What do you recall? What essentially do you recall happening?

A March said he was taking care of it.

Q What was taken care of? What finally transpired?

A My retention of these attorneys.

Q With respect to Mr. March?

A Yes.

Q You went to see him sometime in late 1973. He sent you --

A No, no. I couldn't see Mr. March. He was too busy traveling, taking care of cases, so I didn't see

Mr. March.

Q You saw someone in Mr. March's office?

A No.

Q What did you do?

A Just sat and waited as a client for March to get in touch with me, which he never did.

Q He did send you a carbon copy of a letter, you said, which was --

A After many, many, many points of argument, and I finally got the letter out of him.

Q By that you are referring to Defendant's Exhibit D?

A That's right.

Q Did you have any further contact with Mr. March following his sending out the letter which is Defendant's Exhibit D?

A No.

Q You never heard from him again?

A Only casual conversations on the phone.

Q Did he indicate to you that he had received a communication from Coleco?

A No.

Q When did you have these casual conversations with Mr. March?

A From time to time after receipt of this particular letter.

Q Over what period?

A I asked him to -- what?

Q Over what period?

A I don't remember time.

Q This letter is dated November 15, 1973, the one of which you received a copy, Defendant's Exhibit D.

A Within easily the next eighteen months. From November 1973, for eighteen months I couldn't -- I tried to get Mr. March to institute a suit, to file papers on a suit, which I am talking now as an individual who knows nothing about law. I am not a lawyer.

I went to my attorney and asked him to process the case for suit in the Federal District Court. He said he was doing it. I don't know what he did.

Q In other words, you asked him to bring suit against Coleco?

A Oh, yes.

Q Did he ever discuss with you the fact that he heard from Coleco?

A No.

Q Did he ever discuss with you that he evaluated whether the Coleco game was within the

patent?

A He said "Yes " to me.

MR. HELLER: One moment.

(The witness and counsel conferred off the record.)

MR. COSTAS: Would you repeat the last question and answer?

(Record read.)

BY MR. COSTAS:

Q He said "Yes" to you what?

MR. HELLER: I object. You are getting into an area of attorney-client privilege, and I will object on that basis.

MR. COSTAS: Are you instructing him not to answer?

MR. HELLER: Yes.

Q At some point in time you apparently decided to seek other representation; is that correct?

A Yes.

Q When did you decide to change?

A Several months ago.

Q The present suit was instituted on May 7, 1975, and it was filed by John A. Reilly.

Does that refresh your recollection as

EXHIBIT J

CABLE "MAILVIES"

LAW OFFICES
ARTHUR A. MARCH
60 EAST 42ND STREET
NEW YORK, N. Y. 10017
(212) 661-3660

SUITE 703 CRYSTALL MALL 1
1911 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VIRGINIA 22202

November 15, 1973

Michael Schwefel, Esq.
Coleco Industries, Inc.
945 Asylum Avenue
Hartford, Connecticut 06105

~~PLTF. EXBT.~~ FOR IDENT.
DEFT. EXBT. D
M. KORENMAN
11/11/75

Dear Mr. Schwefel:

I am writing you at the suggestion of Mr. Arnold Greenburg in connection with a patent owned by my client, David Cohn. This patent is No. 3,019,020 and I enclose a copy thereof.

I call this patent to your attention in connection with the "Bowlomatic 300" bowling game produced and sold by Coleco. My client is interested in offering you a license to his patent under mutual agreeable terms and conditions.

I would appreciate hearing from you in this connection at your earliest convenience.

Sincerely yours,

Arthur A. March

AAM/kam
Encls.

Exhibit J

EXHIBIT K

Executive Offices:
945 ASYLUM AVENUE • HARTFORD, CONNECTICUT 06105 • PHONE AREA CODE 203 278-0280

November 26, 1973

FOR IDENT.

~~PLF. EXBT.~~

E

DEFT. EXBT.

11/11/75

M. KORENMAN

Arthur A. March, Esq.
60 East 42nd Street
New York, New York 10017

Dear Mr. March:

I am in receipt of your letter dated November [illegible], 1973 and have taken the liberty of forwarding Patent Number 3,019,020 to our patent attorney, Peter L. Costas, for his review.

Upon receiving his comments, I will contact you in order that we may discuss this matter further.

Very truly yours,

Michael S. Schwefel
General Counsel

MSS/eph

Exhibit K

EXHIBIT L

December 12, 1973

Arthur A. March, Esq.
60 East 42nd Street
New York, New York 10017

PLTF. EXBT. ---- FOR IDENT.
DEFT. EXBT. F 11/11/75 M. KORENMAN

Dear Mr. March:

Infringement Study of Cohn Patent No. 3,019,020
Our File - COL-861

This is in reference to your letter of November 15, 1973, addressed to Mr. Michael Schwefel of Coleco Industries, Inc. relative to the captioned matter.

Based on a review of U.S. Patent No. 3,019,020, we have concluded that the bowling game which is described and illustrated therein is quite dissimilar from the BOWL-A-MATIC 300 bowling game being presently marketed by our client, Coleco Industries, Inc.

More specifically, the bowling game as defined in the claims of your client's patent includes structure which is not embodied in the Coleco BOWL-A-MATIC 300 bowling game. Namely, both of the independent claims of U.S. Patent No. 3,019,020, i.e., Claims 1 and 4, define a bowling game embodying inter alia, "a flat substantially rectangular shaped metal base plate of magnetic material", "an inverted U-shaped frame extending over said base plate in spaced relation thereto", "a supporting member positioned above said guide plate and spaced therefrom, said supporting member being mounted for movement relative to said base plate, spring means positioned intermediate of said guide plate and said supporting member for normally urging said supporting member away from said base plate .

In contrast, in the Coleco BOWL-A-MATIC 300 bowling game the playing surface is made of non-metallic material, and there is no structure embodied therein corresponding to the inverted U-shaped frame found in your client's bowling game. Moreover, Coleco's BOWL-A-MATIC 300 bowling game does not include a supporting member supported in spaced relation to a guide plate for movement relative to the base plate, and does not include spring means interposed between such a supporting member and such a guide plate, for biasing the supporting member away from the base plate.

Exhibit L

Thus, it is readily apparent that the Coleco BOWL-A-MATIC 300 bowling game differs significantly both in structure and mode of operation from the bowling game which is defined in the claims of U.S. Patent No. 3,019,020. There are no present plans to modify the game currently being marketed by our client. Accordingly, our client, Coleco Industries, Inc., has no present interest in acquiring a license under your client's patent.

We wish nevertheless to thank your client for offering Coleco Industries, Inc. an opportunity to consider the acquisition of a license under his patent.

Very truly yours,

Arthur E. Fournier, Jr.

AEF:jp

cc: Michael S. Schwefel, Esq.

AFFIDAVIT OF DAVID M. WETSTONE, IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff	)	
v.	)	CIVIL ACTION
COLECO INDUSTRIES, INC., Defendant	)	No. 75 Civ. 2077 Judge Knapp

AFFIDAVIT

STATE OF CONNECTICUT)
) ss:
COUNTY OF HARTFORD)

DAVID M. WETSTONE, being duly sworn, deposes and says as follows:

He resides at 158 North Beacon Street, Hartford, Connecticut.

He received the Bachelor of Science degree from the University of Connecticut in 1950 and received the degree of Doctor of Philosophy in Chemistry from the Polytechnic Institute of Brooklyn in 1957.

During the period 1950-51, he was research assistant at the University of Chicago. During the period 1951-53, he was research chemist at Foster D. Snell, Incorporated of New York, New York. During the period 1953-56, he was a senior research fellow at the Polytechnic

Institute of Brooklyn. During the period 1956-59, he was a principal investigator in plasma physics at New York University. In 1959, he joined the staff of the United Aircraft Research Laboratories and served as a principal investigator in plasma physics; in 1962 he became academic and technical relations officer, in which capacity he served until 1975. At present, he holds an appointment as consultant for special professional services to the Graduate School of the University of Connecticut.

He has examined and is completely familiar with the structure and operation of the BOWL-A-MATIC 300 toy bowling game manufactured by Coleco Industries, Inc. which has been marked Defendant's Exhibit H in the above captioned matter.

He has read and is familiar with Freeman United States Letters Patent No. 3,866,691, which has been marked Defendant's Exhibit G in the above captioned matter (hereinafter referred to as the Freeman patent) and which is Exhibit H to this motion.

The drawings and written description of the Freeman patent substantially illustrate and describe the BOWL-A-MATIC 300 game marked Defendant's Exhibit H with the following exceptions:

1. Defendant's Exhibit H has eyelets in place of the pulleys 54 shown in the Freeman patent;

2. Some bowling pins in Defendant's Exhibit H have holes in their bottom surfaces whereas none of those shown in the Freeman patent have such holes; and

3. Defendant's Exhibit H has a transparent plastic window behind the bowling pins whereas the game shown in the Freeman patent does not.

The playing surface of the BOWL-A-MATIC 300 game (surface 72 of the Freeman patent) is non-metallic and non-magnetic and has a rectangular configuration. The playing surface has ten disc-shaped magnets (magnets 134 of the Freeman patent) seated in spaced recesses disposed in a triangular array. The playing surface is a two-piece construction with a base member of paper chipboard extending the full width and an elevated member of narrower width which is also made of paper chipboard with a top photographic layer resembling a wood pattern alley, thus providing "gutters" on either side. The playing surface is not a metal plate and it is not formed of magnetic material.

The playing surface of the BOWL-A-MATIC 300 game has a pair of separately formed, vertically extending side panels made of pressed wood (panels 74, 76 of the Freeman patent) which have longitudinal channels to receive the side edges of the bottom member providing the playing surface(72 of the Freeman patent). The side panels are not integral with the opposite side or longitudinal edges of the playing surface, and the playing surface does not have any upstanding flanges integral with the opposite side edges thereof.

The BOWL-A-MATIC 300 game has a rear housing (housing 14 of the Freeman patent) which comprises a vertical panel (wall portion 38 of the Freeman patent) having a pair of vertically spaced horizontal shelf members (members 40, 42 of the Freeman patent) and a pair of generally

verticaly side portions (34, 36 of the Freeman patent) extending perpendicularly thereto. The rear housing is secured to the previously mentioned side panels by threaded fasteners. The rear housing is not U-shaped, does not extend over the playing surface, and is not secured to flanges integral with the playing surface.

The BOWL-A-MATIC 300 game has a triangular cone support (cone support 118 of the Freeman patent) secured to the rear housing and extending over the playing surface, with a top cover (cover 144 of the Freeman patent) secured to the cone support and extending over the cone support. Both the cone support and top cover are rigidly mounted and do not move. Non-elastic cords are secured at one end to the tops of the bowling pins, extend upwardly through the cone support, rearwardly through apertures in the rear housing, and are secured at the other end to vertically disposed springs (springs 114 of the Freeman patent). These springs are connected to a horizontally disposed, vertically movable spring support brace (brace 110 of the Freeman patent), and this brace is disposed rearwardly of the rear housing and is biased upwardly by springs (springs 112 of the Freeman patent). The spring support brace is disposed laterally of the cone support and always lies below the horizontal plane defined by the planar portion of the cone support. The BOWL-A-MATIC 300 game does not have a supporting member carrying the bowling pins which is disposed above the cone support and mounted for movement relative to the playing surface.

As mentioned in the previous paragraph, springs (springs 112 of the Freeman patent) extend between the upper portion of the rear housing and the spring support brace. There are no springs positioned intermediate the cone support and either the top cover or the spring support brace.

The bowling pins of the BOWL-A-MATIC 300 game are connected to the spring support brace by non-elastic cords and springs (cords 116 and springs 114 of the Freeman patent). There are no elastic strings securing the bowling pins to either the spring support brace or top cover.

All of the springs in the BOWL-A-MATIC 300 game are tension springs, i.e., springs which resist forces tending to expand or stretch the springs.

DAVID M. WETSTONE

Subscribed and sworn to before me this 14th day of May, 1976.

Notary Public

MY COMMISSION EXPIRES MARCH 31, 1978

DEFENDANT'S RULE 9 (g) STATEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff	)	
v.	)	CIVIL ACTION
COLECO INDUSTRIES, INC. Defendant	)	No. 75 Civ. 2077
	)	Judge Knapp

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

As required by Local Rule 9(g), Defendant COLECO INDUSTRIES, INC. submits the following statement of material facts as to which it submits there is no genuine issue to be tried.

1. United States Letters Patent No. 3,019,020 was granted on January 30, 1962 to Plaintiff DAVID COHN.

2. In Civil Action No. 75 Civ. 2077, the infringement of said Letters Patent is placed in issue by reason of the complaint, answer to the complaint, and counterclaim alleged by Defendant.

3. The alleged invention of the subject Letters Patent is a toy bowling game.

4. United States Letters Patent No. 3,019,020 contains two independent claims, Claims 1 and 4, and two claims dependent on Claim 1, Claims 2 and 3.

5. By admission of Plaintiff, the drawings of Freeman United States Letters Patent No. 3,866,691 substantially illustrate, and the specification of said patent substantially describes, the BOWL-A-MATIC toy bowling game manufactured by Defendant which is alleged by Plaintiff to infringe Cohn United States Patent No. 3,019,020.

6. During prosecution of the application which matured into said Cohn patent, the claims of the application were rejected twice on the basis of unpatentability over the cited prior art.

7. Following the first of the rejections referred to in Paragraph 6, the pending claims were amended in an effort to distinguish patentably over the cited prior art.

8. Following the second of the rejections referred to in Paragraph 6, Plaintiff's attorney proposed an amendment to the pending claims which was not entered as the Examiner indicated that, if amended as proposed, the claims would have been considered unpatentable in view of the prior art.

9. Following the refusal to enter the proposed amendment referred to in Paragraph 8 and an interview between Plaintiff's attorney and the Examiner, pending Claim 18, identical to Claim 1 of said Cohn patent, was substituted for pending Claim 17.

10. Pending Claim 18 added the following structural limitations not present in Claim 17 to distinguish the cited prior art:

a. the base plate was defined as having upstanding flanges integral with the opposite side edges thereof;

b. an inverted U-shaped frame was added which was defined as extending over the base plate in spaced relation thereto and having the lower opposite edges thereof secured to the flanges on the base plate;

c. a substantially triangular shaped guide plate was added which was defined as having relatively spaced openings therein and being mounted on the U-shaped frame;

d. the supporting member was defined as being positioned above the guide plate and spaced therefrom; and

e. the spring means was further defined as being positioned intermediate the guide plate and supporting member for normally urging the supporting member from the base plate.

11. Plaintiff's attorneys were acting under a power of attorney during the pendency of the patent application which matured into said Cohn patent which empowered them to represent Plaintiff before the Patent Office.

COLECO INDUSTRIES, INC.,
DEFENDANT

By _____

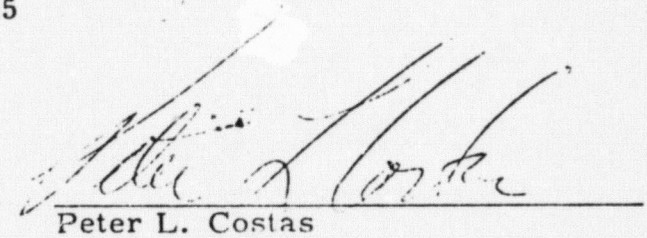
Peter L. Costas
Attorney for Defendant
3 Lewis Street
Hartford, Connecticut 06103
203-278-9892

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Statement of Material Facts as to Which There is No Genuine Issue to Be Tried was served by first class mail, postage prepaid, this 18th day of May, 1976, upon the following counsel:

Paul H. Heller, Esq.
Kenyon & Kenyon Reilly Carr & Chapin
59 Maiden Lane
New York, New York 10038

Kenneth E. Macklin, Esq.
180 South Broadway
White Plains, New York 10605



Peter L. Costas
Attorney for Defendant
3 Lewis Street
Hartford, Connecticut 60103
203-278-9892

AFFIDAVIT OF WILLIAM SLINGER IN SUPPORT OF PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff	)	
v.	)	CIVIL ACTION
COLECO INDUSTRIES, INC. Defendant	)	No. 75 Civ. 2077 Judge Knapp

AFFIDAVIT

STATE OF NEW YORK) ss.
COUNTY OF QUEENS)

WILLIAM R. SLINGER, being duly sworn, hereby deposes and says as follows:

He resides at 120 Rutherford Place, Kearney, New Jersey.

He is a graduate of Lafayette College, Easton, Pa., from which he received the degree of Bachelor of Mechanical Engineering in 1935.

From 1933 to 1945 he was employed by Crucible Steel Corporation, Harrison, New Jersey in a variety of positions: Design Engineer, Project Engineer and Steel Mill Engineer.

Subsequently, he was employed in Mexico installing steel mills. Specifically, he was Technical Assistant to the Vice President in charge of Production of La Consolidadas, S.A., Mexico City from 1945 to 1947. From 1947 to 1950 he was Vice President and Chief Engineer of Industrias Basicas, S.A., Mexico City.

From 1950 to 1953 he was Rolling Mill Consultant for American Compressed Steel Co., Inc. From 1953 to 1956 he was a Rolling Mill Consultant for Structural Metals, Inc., Seguin, Texas.

From 1956 to the present time he has been employed by Treadwell Corporation, Engineers and Constructors, New York,

New York, initially as Design Engineer and now as Resident Engineer.

He is the inventor of several United States Letters Patent, the latest of which is U.S. Patent No. 3,950,983.

He has read and is familiar with the patent in suit, Cohn U.S. Patent No. 3,019,020. He has also read and is familiar with Coleco U.S. Patent No. 3,866,691.

He has examined one of the Coleco Bowl-A-Matic 300 games manufactured by the defendant. His initial reaction after reading the Cohn patent in suit and then examining that Coleco game was that Coleco had "hung pineapples on Cohn's game." By that colorful terminolgy he means that the Coleco game is essentially the Cohn game of the patent in suit with some added frills.

He has examined one of the Coleco Bowl-A-Matic 300 games which has been modified in order to demonstrate the fact that the Coleco game is essentially the Cohn game of the patent in suit.

Photographs of different views of the modified Coleco Bowl-A-Matic 300 game are annexed, as Plaintiff's Exhibit B.

The playing surface of the BOWL-A-MATIC 300 game, indicated as surface 72 in Defendant's Exhibit G (Freeman U.S. Patent No. 3,866,691) is of a rectangular configuration. The playing surface contains magnetic material (ten circular magnets [134 of the Freeman patent] in triangular array) so placed in the playing surface that their centers are substantially aligned vertically with the corresponding ten holes of the "cone support" (118 and 126 of the Freeman patent). This alignment is more clearly seen in a portion of Plaintiff's Exhibit A, which is annexed and which is a cross sectional side view of the following parts of the BOWL-A-MATIC game (references to the Freeman patent): (a) cone support 118, showing holes 126 therein, (b) strings 116, attached to (c) bowling pins 102, and (d) playing surface 72, containing (e) magnets 134 in holes therein.

The vertically extending side panels (74 and 76 of the

Freeman patent) have longitudinal channels to receive the side edges of the bottom member providing the playing surface (72 of the Freeman patent). These parts are assembled as a unit. Consequently, those side panels are integral with the playing surface. In addition, those portions of the side panels (74 and 76) which extend above the bottom member providing the playing surface (72) constitute flanges.

The rear housing (14 of the Freeman patent) has side portions (34 and 36) and shelf member (40) which form the shape of an inverted "U." The sides (34 and 36) are secured to the side panels (74 and 76), the upper portions of which constitute flanges.

The BOWL-A-MATIC 300 game has a "cone support" (118 of the Freeman patent) secured to a shelf member (40) of the "U" shaped configuration of portions 34,40 and 36 of the rear housing. There are ten holes (126) in the "cone support," which, as indicated above are aligned over magnets (134) in the playing surface. Bowling pins (102 of the Freeman patent) are attached at their top ends to strings (116) which pass up through the holes. When a string is pulled up and then released, the pin is lowered onto the magnet with which the hole in the "cone support" is aligned. The "cone support" is a guide plate, therefore. Those strings then turn ninety degrees to the rear of the game and pass through apertures in the rear housing after which they turn ninety degrees downward, are then attached to springs and the springs in turn attached to a horizontal, spring support brace (110 of the Freeman patent), which is movable up and down relative to the playing surface. A string (50 in Freeman patent) is attached to the center of the spring support brace, is directed downward, makes a ninety degree turn around a pulley (54 in Freeman patent) and then is directed toward the front of the game to a handle (80 in the Freeman patent). The handle has two positions - to the left to reset the pins and then to the right to put the game in "play" position. The reciprocating left-right action of the handle causes a correspond-

ing up-down reciprocating action of the spring support brace (130). When the brace is in the up position the pins are lowered on to the magnets in the playing surface by the strings passing through the guide plate ("cone support" 118 of the Freeman patent). When the brace is then put in the down position, the elastic ligaments (strings 116 in combination with springs 114 of the Freeman patent) are stretched or tensioned. As stated, the strings(116) and springs (114) constitute elastic ligaments, i.e., in combination they function as units in which the elasticity of the spring segments is imparted to the overall unit comprised of springs and strings.

In the annexed Plaintiff's Exhibit B:

Figure 1 is a view of a BOWL-A-MATIC 300 game from the playing end. Some modifications for demonstration purposes are visible, namely, locating pins and fastening screws at the top of the top cover of the game and sheet steel pieces in place of magnets at the back corners of the triangular configuration of magnets in the playing surface.

Figure 2 shows in detail how the magnets were removed from the playing surface and the sheet steel corner used in place of the back corner magnets.

Figure 3 shows the sheet steel corners in place under the clear film overlay which is part of the game. The magnets which were formerly in place have left their imprint on the film which is now over the sheet steel corners.

Figure 4 shows how the magnets in the bases of the back corner pins attract them to the sheet steel corners on the playing surface.

Figure 5 shows the modification of the front three pins, namely the replacement of the string and spring combinations with elastic strings.

Figure 6 shows the five central pins of the game which are unmodified, either as to string means or magnetic material in the playing surface to which they are attracted.

Figure 7 shows the spring support brace where there are attached all the elastic ligments, i.e., elastic strings or combinations of string and spring. Also indicated are two modifications, mamely a plastic strip glued above the apertures in the back housing and a hook type detachable fastener in the string below the spring support bar. That string, of course, goes around the pulley and under the playing surface to the handle at the front of the game. The handle (not shown) is in the reset position.

Figure 8 shows the same view but the handle (again not shown) is in the "play" position and the elastic strings and string and spring combinations are stretched.

Figure 9 shows the top cover in place on the BOWL-A-MATIC 300. The two locating pins are visible on the top cover toward the rear of the game as are the two fastening screws on the top cover toward the front of the game. Also, the top cover has been cut and provided with a door. Finally, slots have been cut at the rear edge of the top cover above the points where the strings are.

Figure 10 shows a reset means for the game adapted to be mounted on the locating pins on the top cover of the BOWL-A-MATIC 300 game and fastened by the fastening screws on the top cover. There are spring means on either side of the reset means which hold the reset bar up against top stops. The reset bar has a hook mounted in its center.

Figure 11 shows the reset bar of Figure 10 being depressed.

Figure 12 shows the spring support bar being held after being unhooked from the fastener under it.

Figure 13 shows the reset means of Figure 10 mounted on the top cover of the BOWL-A-MATIC 300, and the spring support bar, shown unfastened in Figure 12, now hooked onto the reset bar of the reset means.

Figure 14 shows the same view, but the reset bar has been depressed and released in a reciprocating down-up motion, thereby resetting the ten bowling pins, modified and unmodified.

Figure 15 shows the front view corresponding to the rear view shown in Figure 13. The door in the top cover is open.

Figure 16 similarly shows the front view corresponding to the rear view shown in Figure 13. The door in the top cover is again open.

Figure 17 is a front view of the game showing the reset bar being depressed.

Figure 18 is a rear view of the game showing the reset bar being depressed.

Having reviewed the operation of the Coleco BOWL-A-MATIC 300 as modified, I note that it functions in essentially the same manner:

(1) whether the elastic ligaments connecting the bowling pins to the spring support brace are elastic strings or combinations of strings and springs,

(2) whether there are magnets in or there is sheet steel on the base or playing surface as the magnetic material,

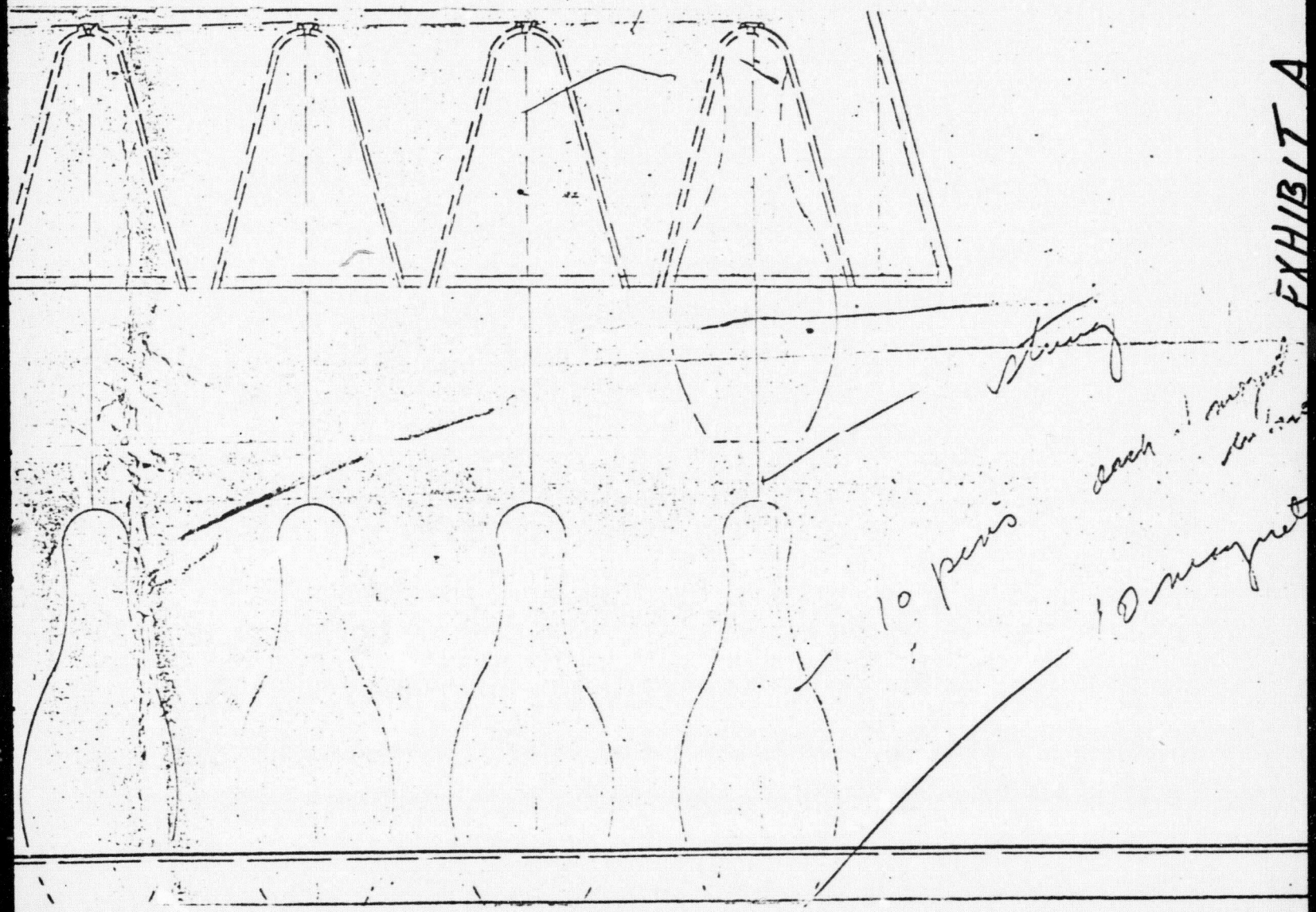
(3) whether the reset handle at the front of the game is used or the string from the spring support brace is disconnected and the spring support brace is attached to the reset bar and reciprocated in an up-down fashion (as shown in Figure 17 of Plaintiff's Exhibit B) in a manner similar to the way it is reciprocated in an up-down fashion by the handle (80 of the Freeman patent) of the BOWL-A-MATIC 300 game.

William R. Slinger

Subscribed to and sworn to before me this 9th day of June 1976

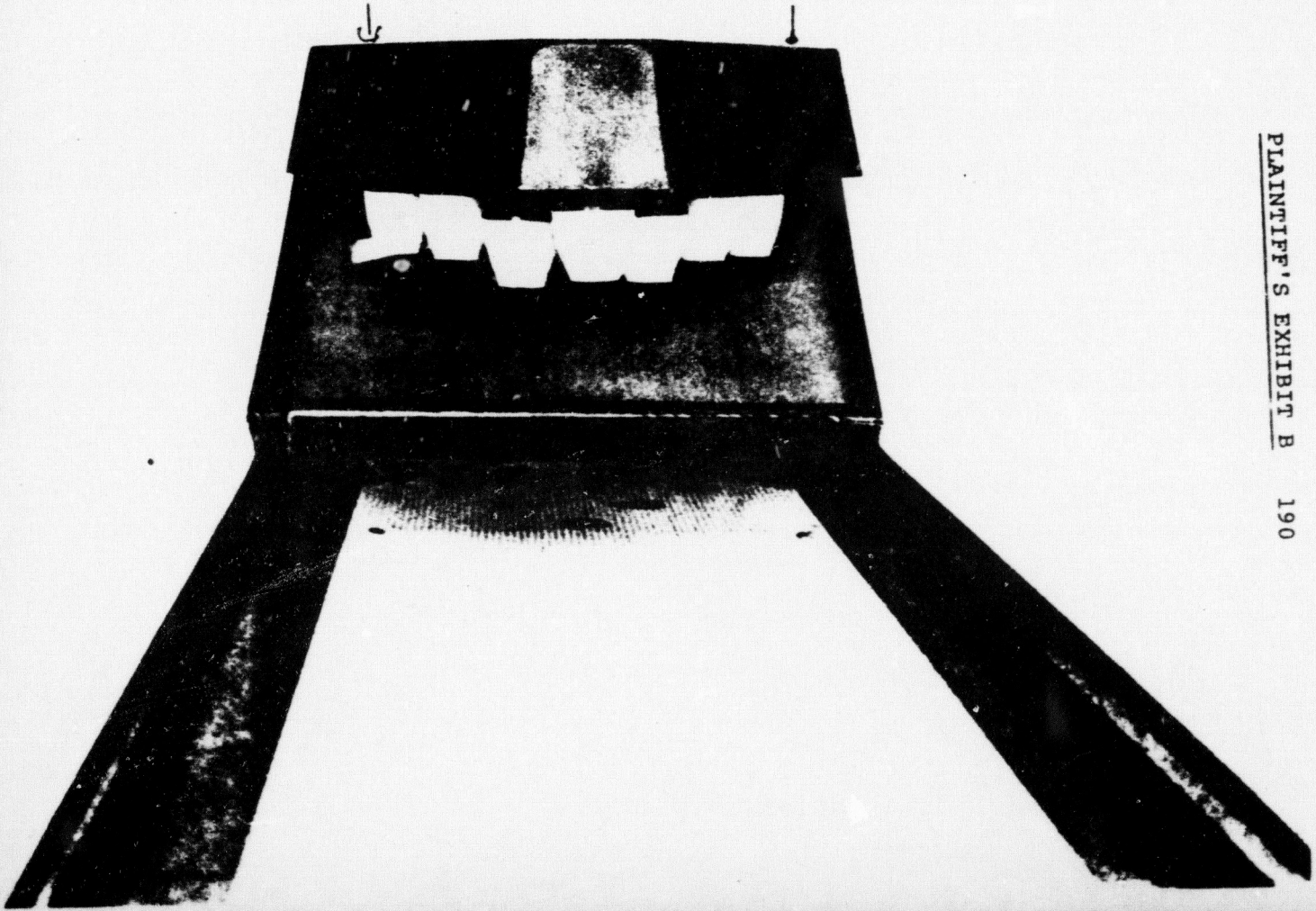
THOMAS SOUKAS
Notary Public, State of New York
No. 03—3772585
Qualified in Bronx County
Commission Expires March 30, 1977

Notary Public



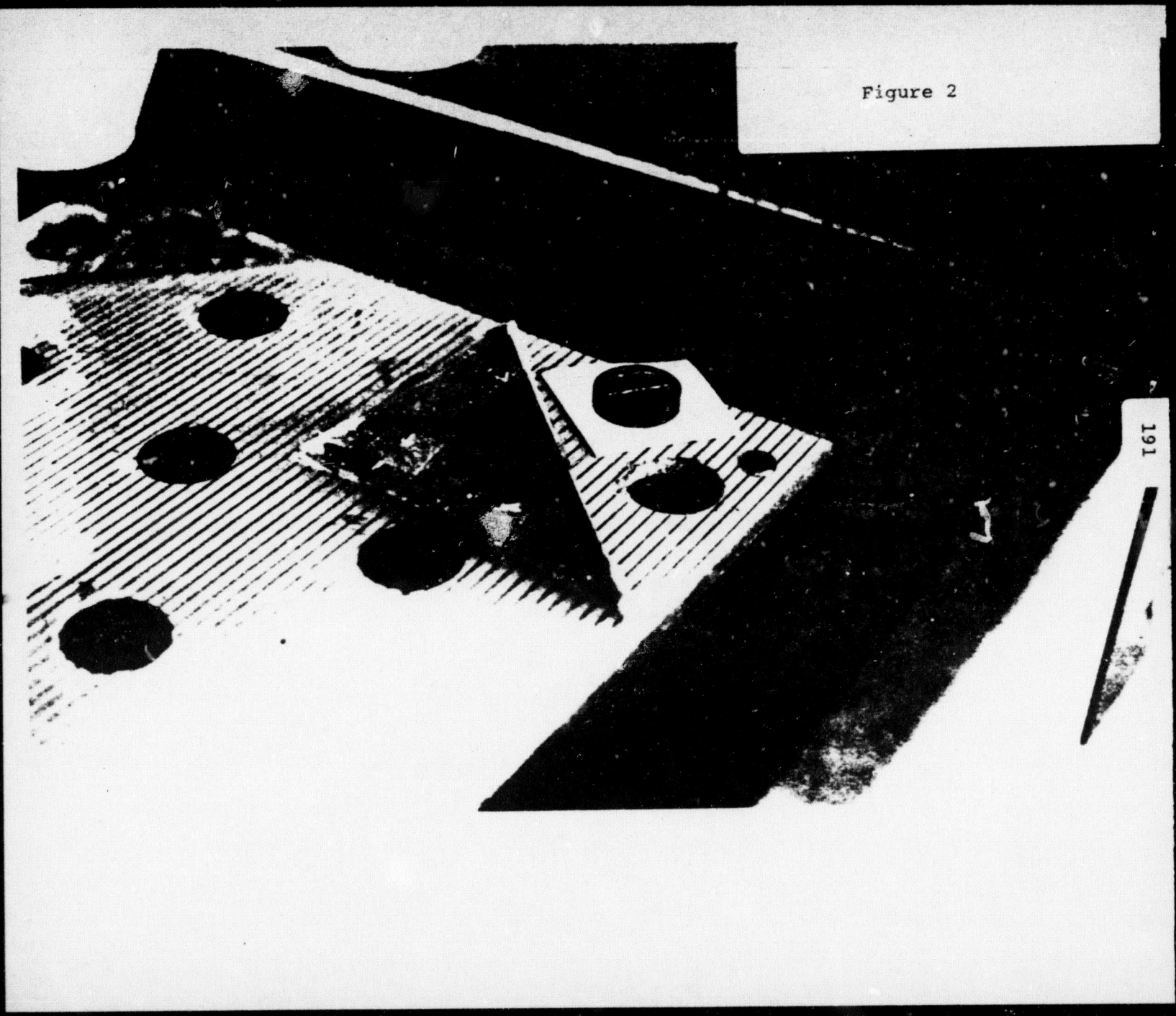
189 Plaintiff's Exhibit A

Figure 1



PLAINTIFF'S EXHIBIT B 190

Figure 2



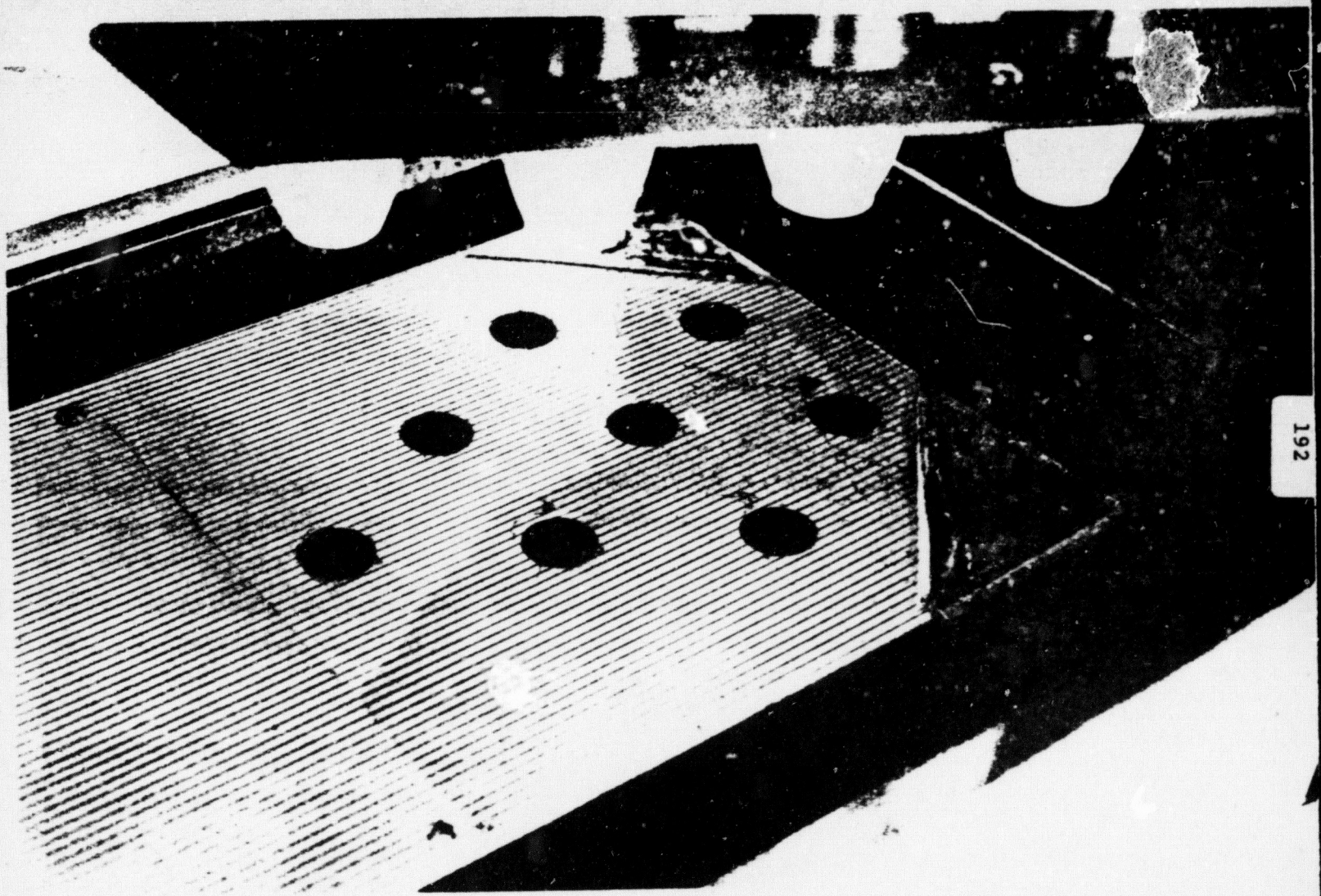


Figure 3

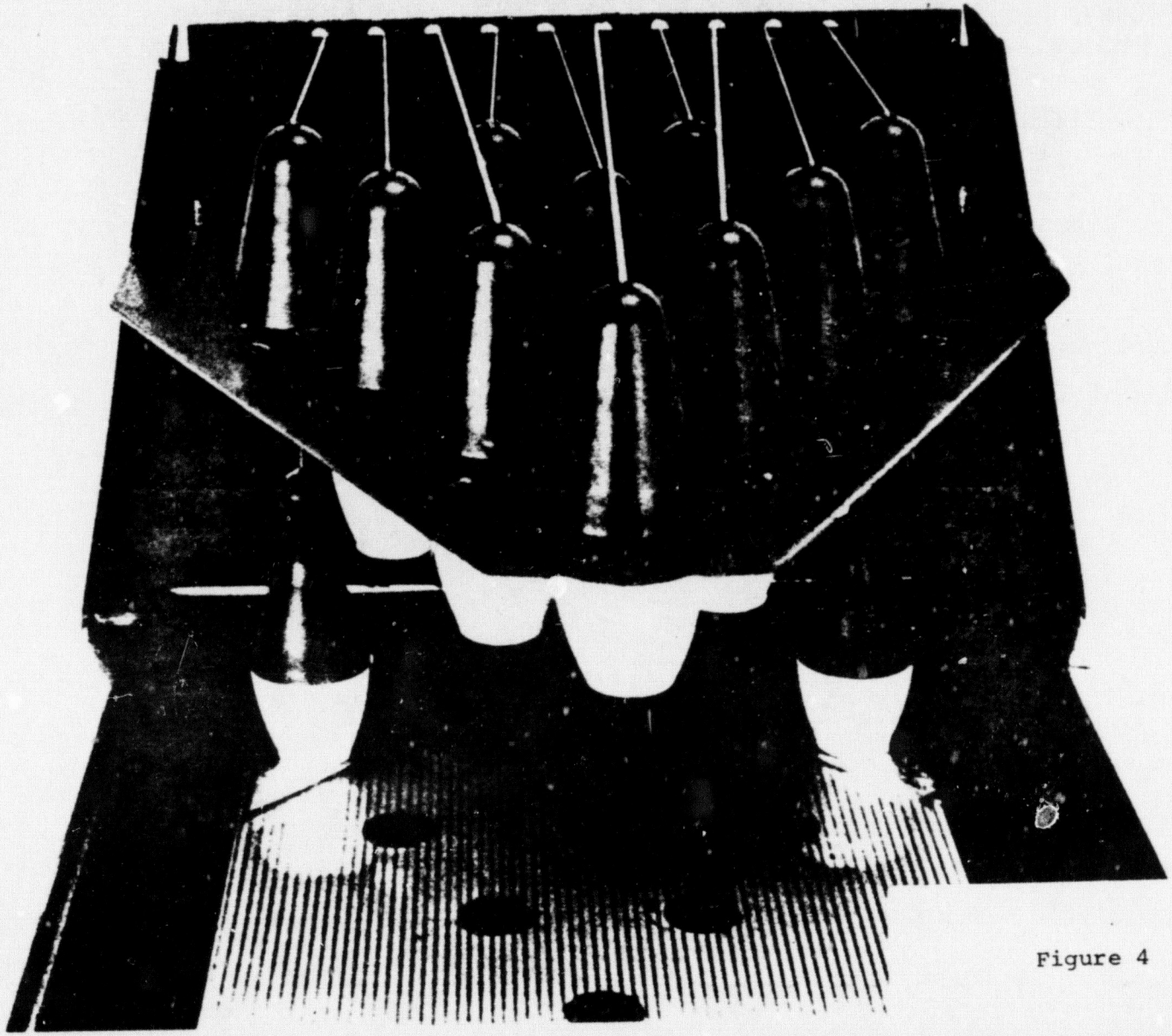


Figure 4

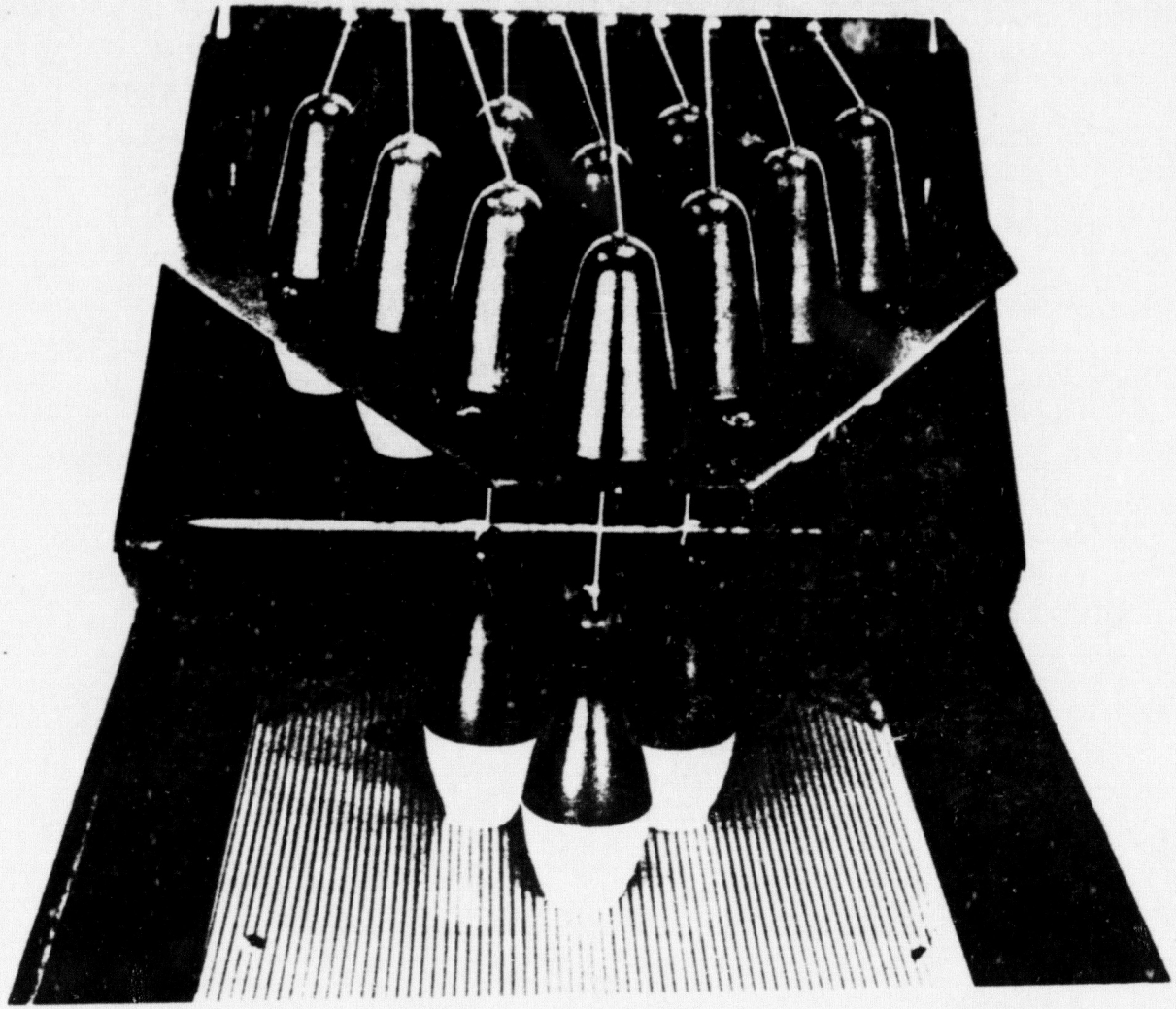


Figure 5

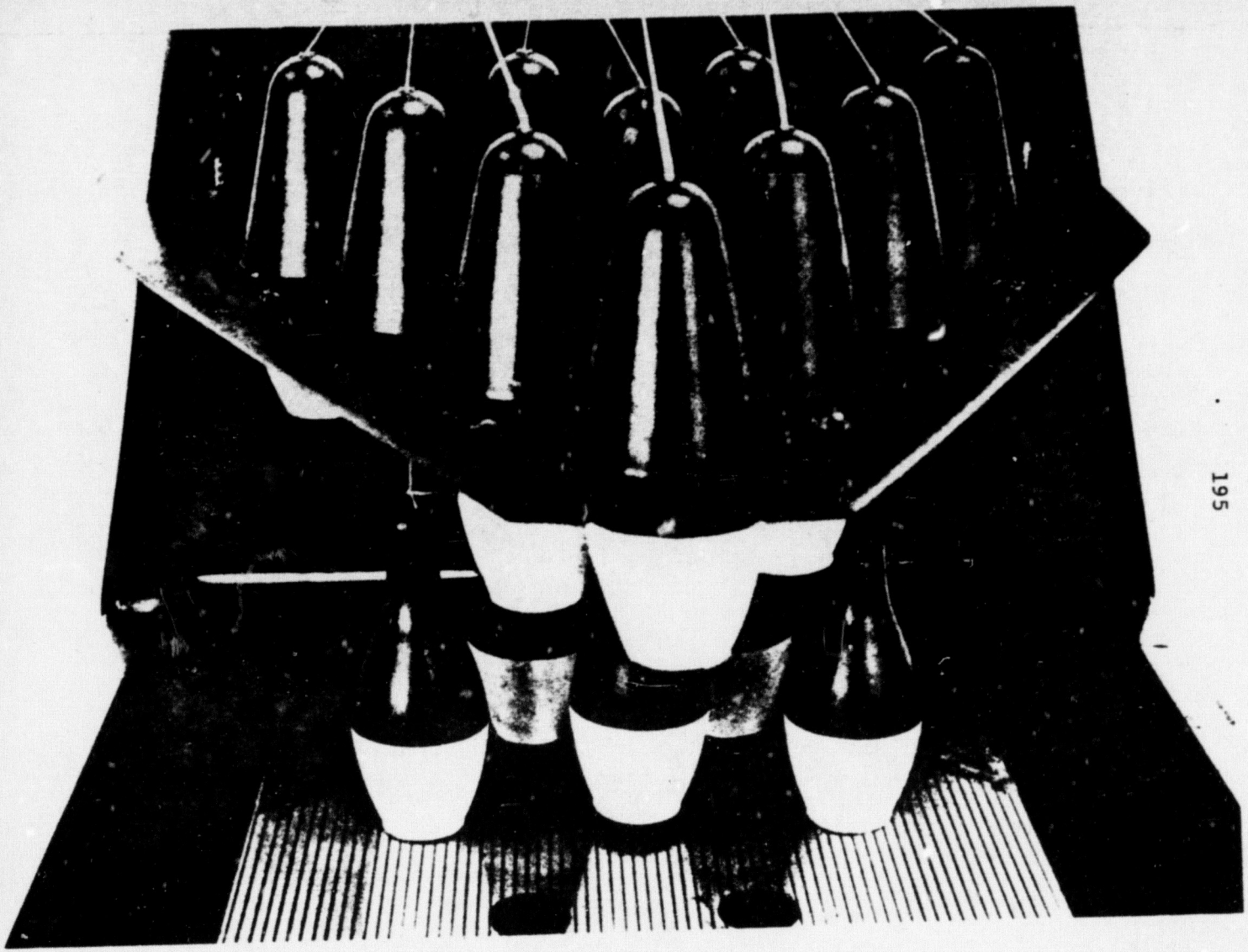


Figure 6

Figure 7

Figure 8

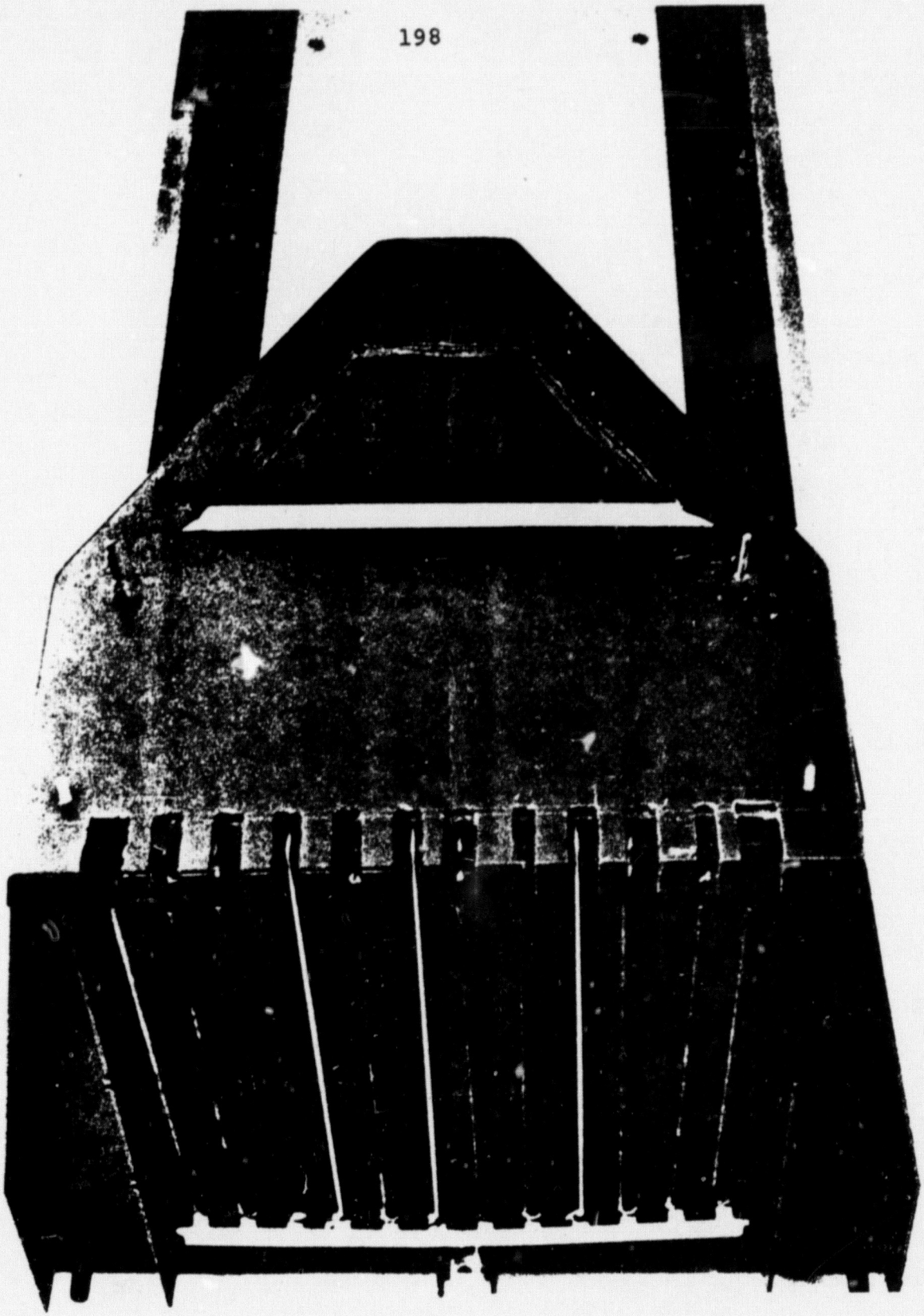


Figure 9

Figure 10

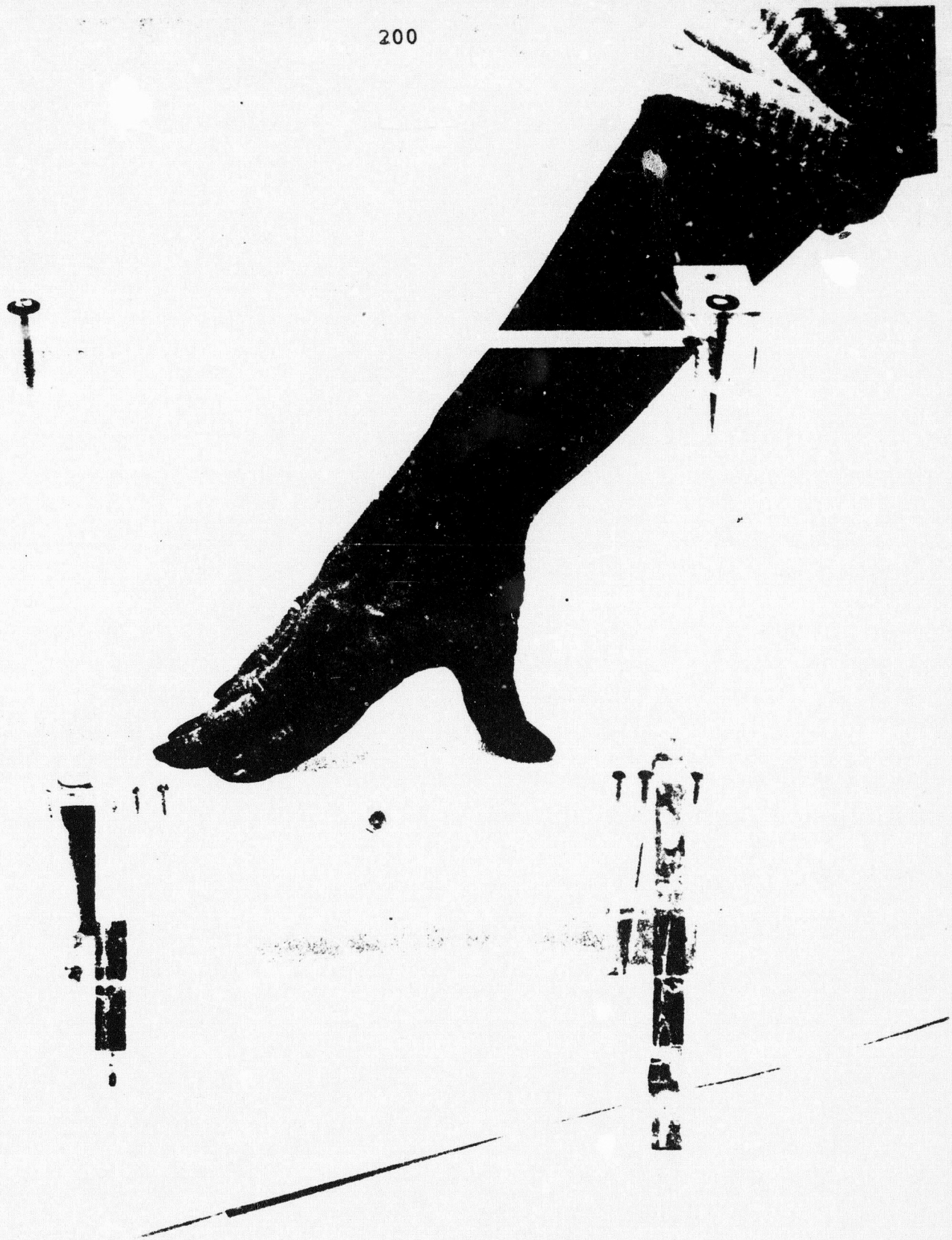


Figure 11

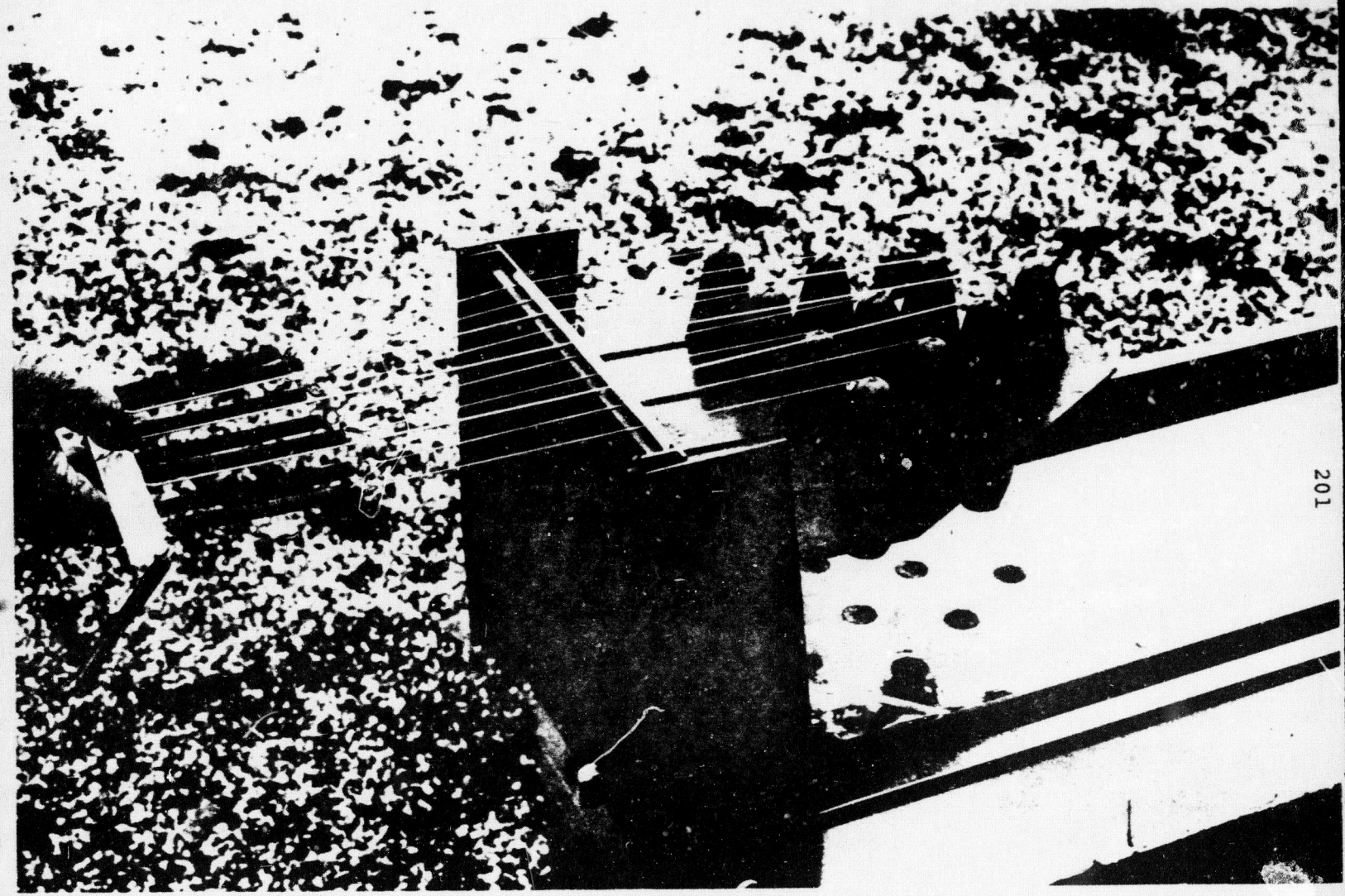


Figure 12

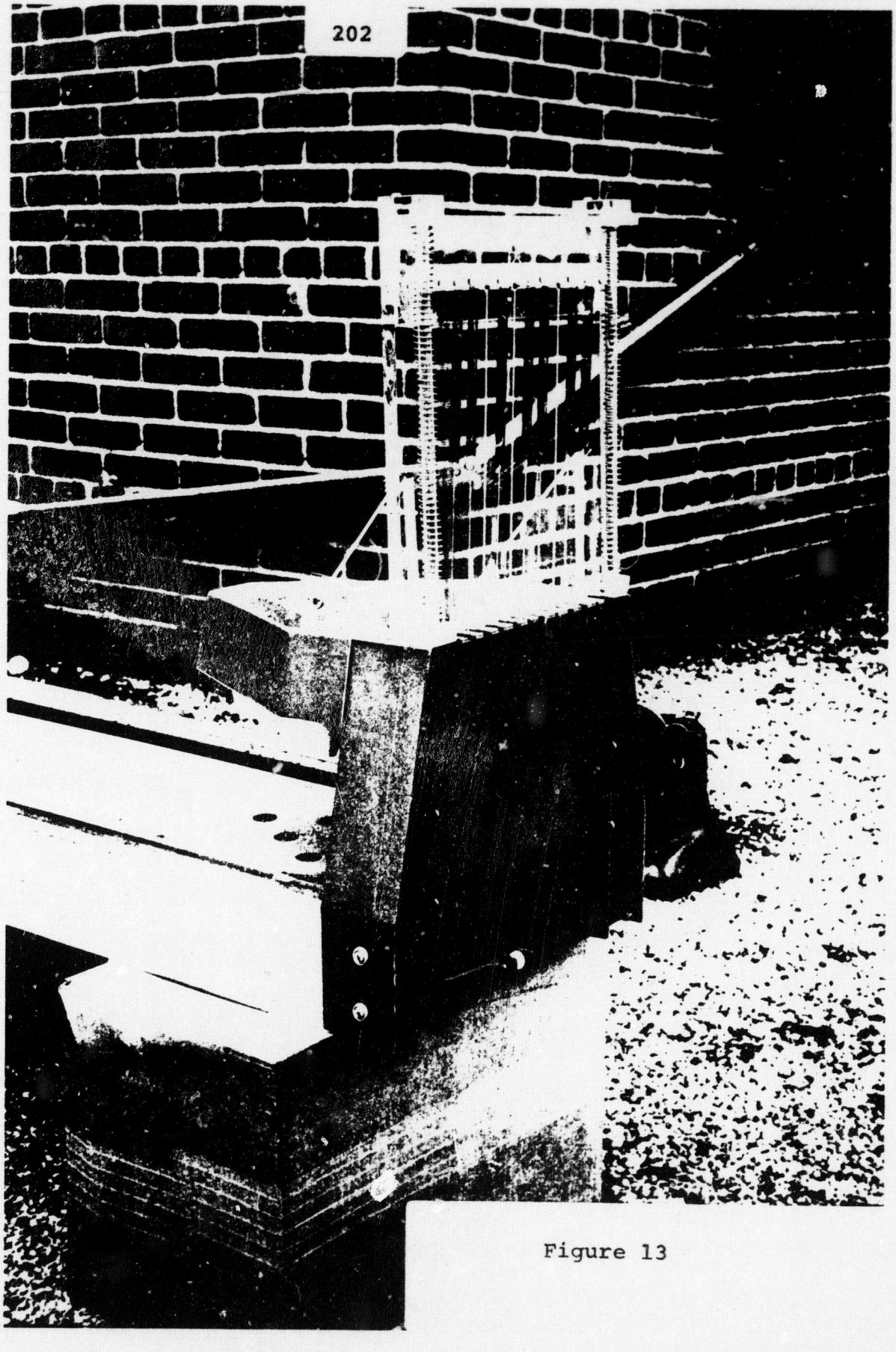


Figure 13

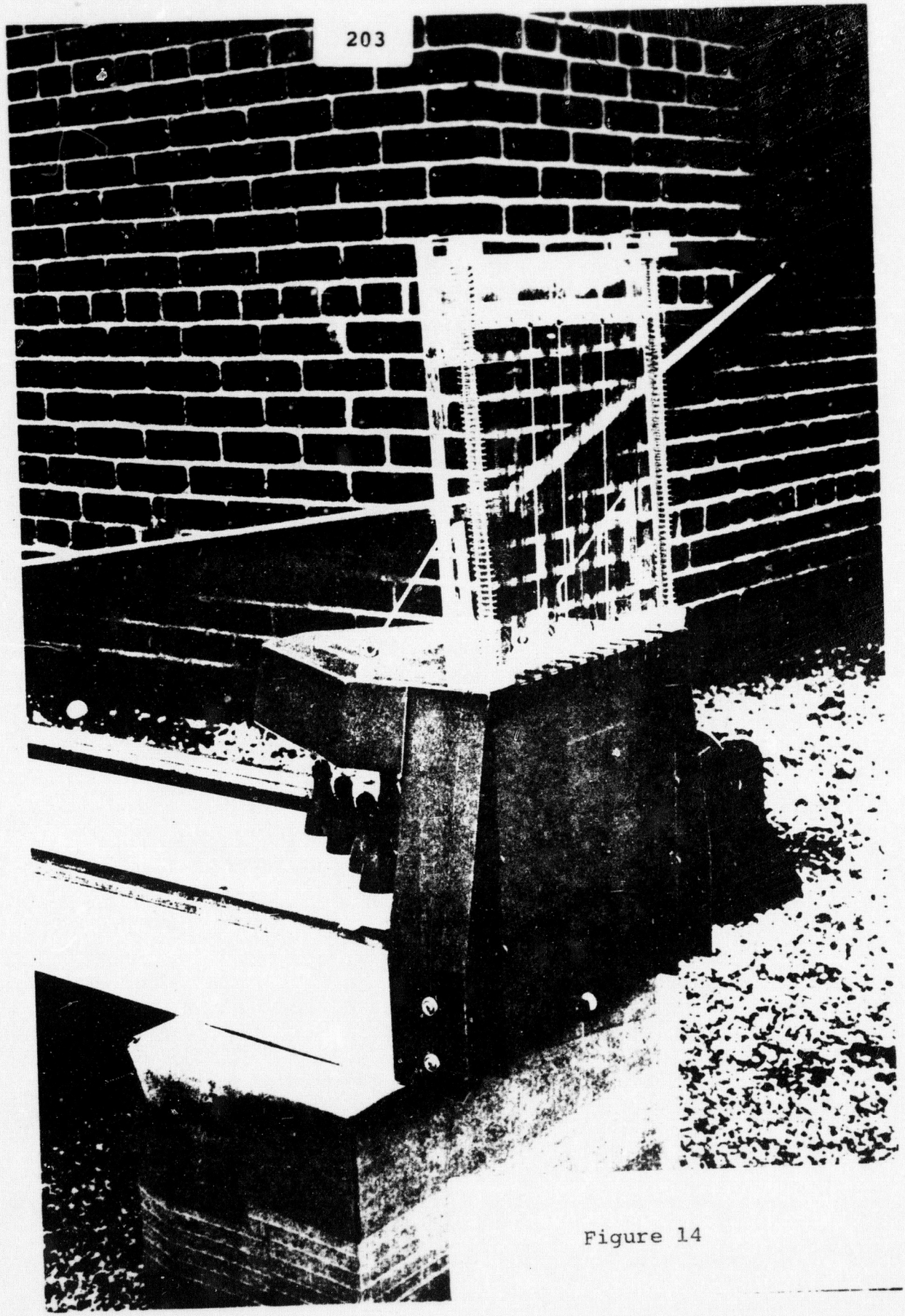


Figure 14

Figure 15

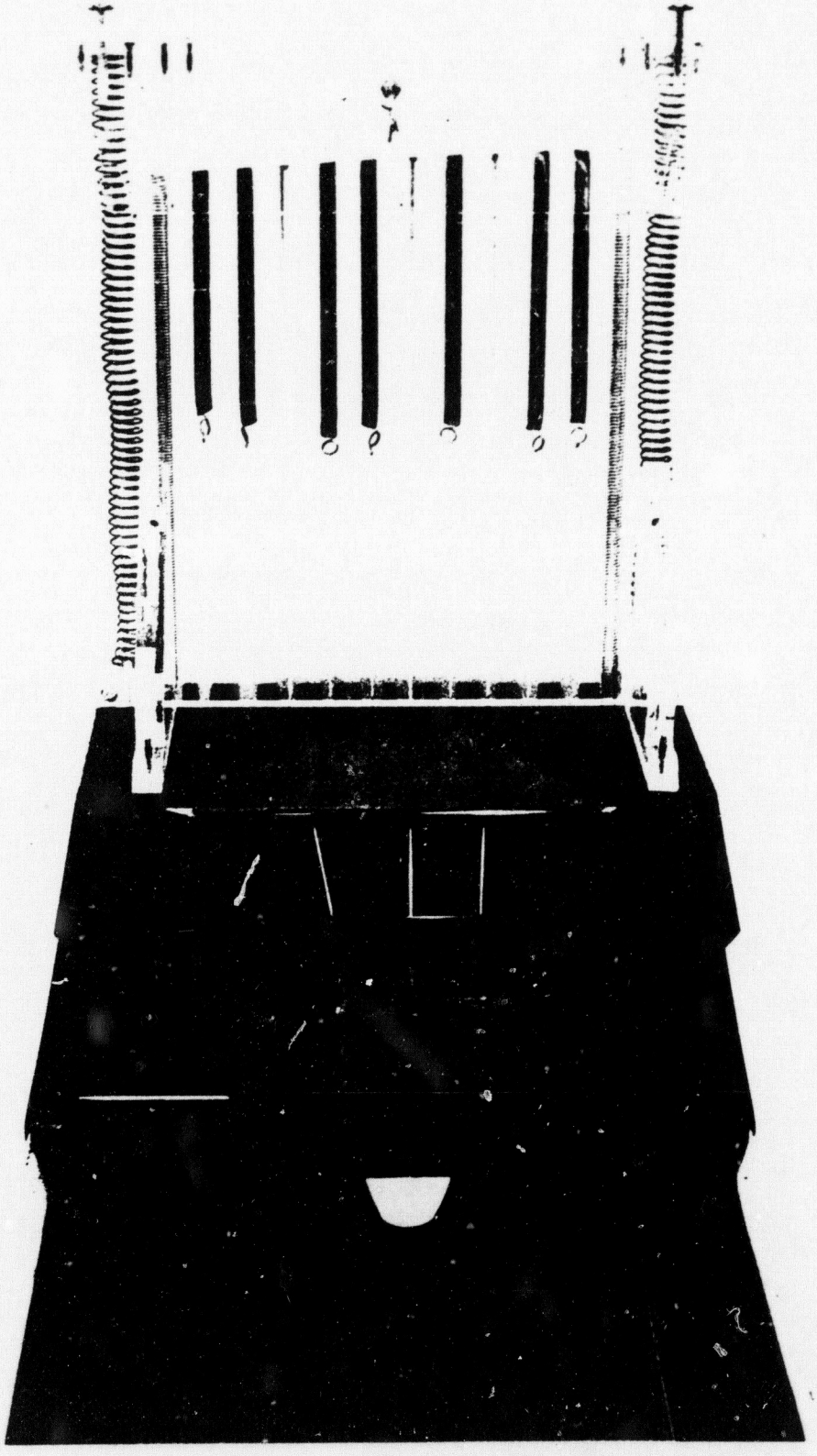


Figure 16

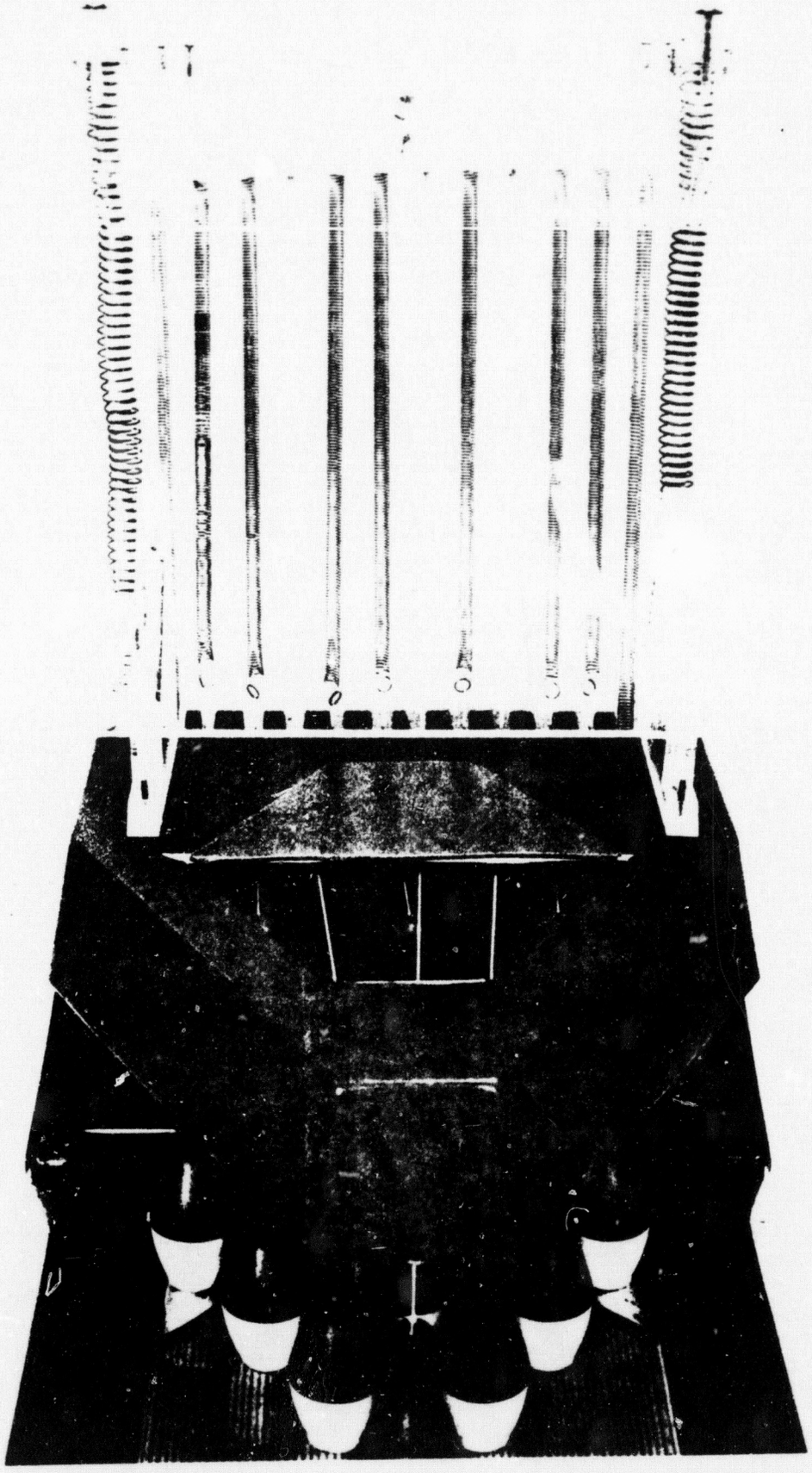
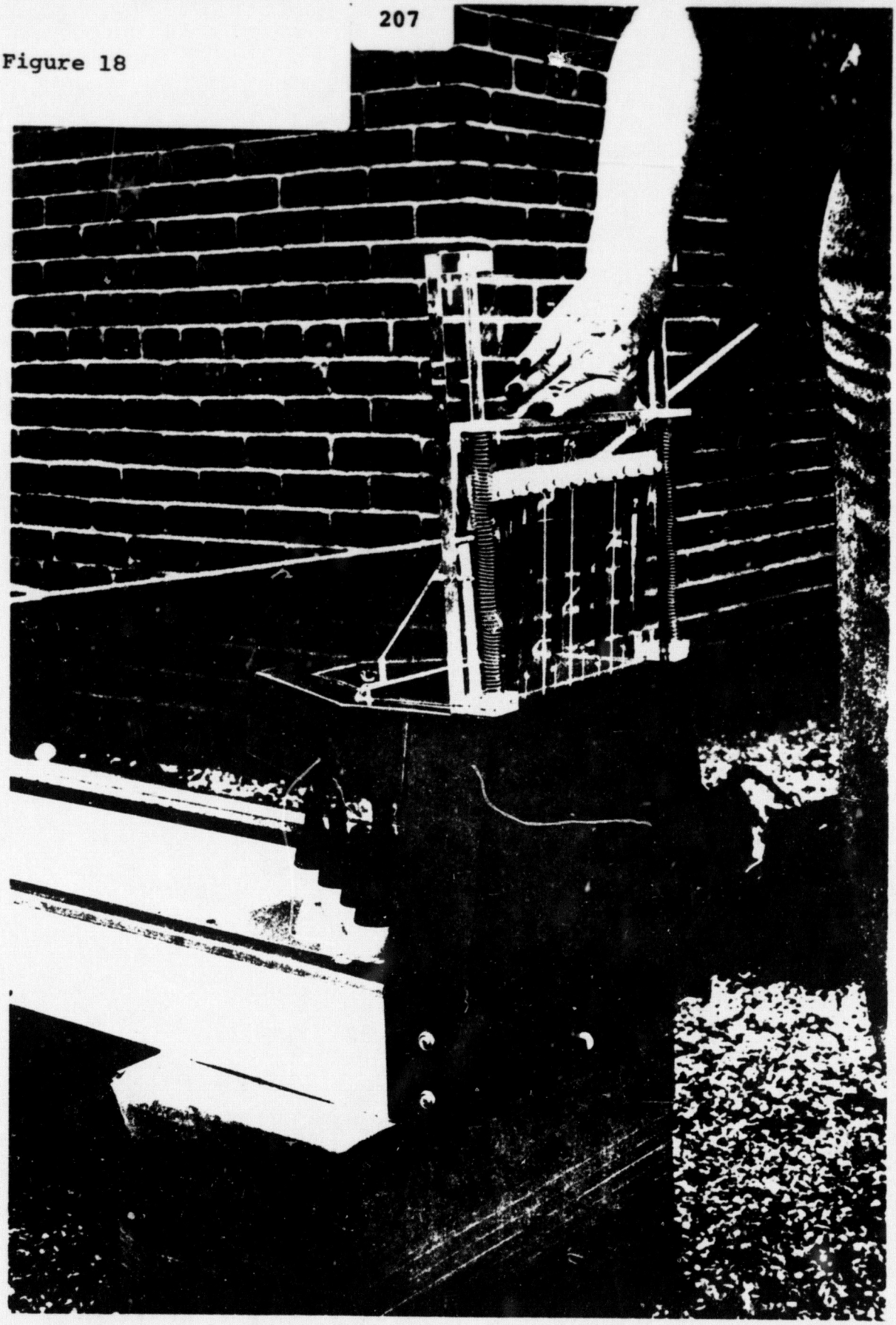


Figure 17

Figure 18



PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff	)	CIVIL ACTION
v.	)	No. 75 Civ. 2077
COLECO INDUSTRIES, INC. Defendant	)	Judge Knapp

MEMORANDUM IN OPPOSITION TO COLECO'S MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT OF COHN UNITED STATES LETTERS PATENT NO. 3,019,020

INTRODUCTION

Defendant's motion for Summary Judgment is based upon a contention that their toy bowling games which Plaintiff has charged to infringe his U.S. Patent 3,019,020 do not fall within the scope of protection afforded by that patent. As grounds for that contention Defendant alleges that file wrapper estoppel is applicable and severely limits the scope of the patent.

Defendant also alleges that this action is "completely unjustified" and "frivolous" and therefore seeks an award of its attorney's fees.

Plaintiff will show hereinafter that there exist geniune issues of material fact, and therefore Defendant's Motion for Summary Judgment should be denied. Plaintiff will also show that Defendant has not proved its allegations that this action is "completely unjustified" and "frivolous" and consequently the Defendant's request for an award of its attorney's fees should be denied.

Before turning to the facts of the present action, it is helpful to briefly review the statutory provisions covering the protection of an inventor's property rights in his invention.

The statutory provision is 35 U.S. Code 154 which provides:

> "Every patent shall contain ...
> a grant to the patentee ...for the
> term of seventeen years ...
> of the right to exclude others
> from making, using, or selling
> the invention throughout the
> United States, referring to the
> specification for the particulars
> thereof ...."

The claims of a patent are part of the specification of the patent. However, it should be noted that the grant of the patent is not directed to the claims, but to the "invention".

In 35 U.S. Code 112 the claims required in an application for patent are stated to be:

> "the subject matter which the
> applicant regards as his invention."

It should be noted that the statute does not state that the claims define the invention, but only what the applicant "regards" his invention to be.

Plaintiff's Invention which is the Subject of U.S. Patent 3,019,020

Plaintiff invented the first unitary toy bowling game with play action simulating regulation bowling, automatic removal of struck bowling pins from the playing surface, and a single reciprocating action for resetting of the bowling pins, using a guide plate to properly locate the pins on the playing surface.

With the exception of the bowling ball, Plaintiff's invention is a unitary device, i.e., the playing surface, bowling pins and reset means are a unit. Despite the fact that Plaintiff's invention is a toy and not a regulation or intermediate size game, it nevertheless simulates the action of a regulation size bowling game, e.g., a struck pin is free to strike a neighboring pin. Struck pins

are automatically removed from the playing surface as they also are in regulation bowling games. All the struck pins may be reset by a single reciprocating action.

Plaintiff's invention comprises a base comprised of magnetic material, bowling pins containing magnets which are attracted to the magnetic material of the base, elastic ligaments attached to the tops of the bowling pins, the other ends of the elastic ligaments being passed through holes in a triangular configuration in a guide plate fixed above the base and then the ends of the elastic ligaments are attached to a vertically spring urged reciprocatable reset means. In one of its reciprocating positions, the reset means allows the bowling pins to make contact with the magnetic material of the base and be attracted to it. In the other reciprocating position, the elastic ligament is stretched or placed under tension. The tension is not sufficient to break the magnetic attraction of the bowling pins to the base, but is sufficient to pull bowling pins up from the base when the pins are struck by the ball or by a neighboring pin which has been struck by the ball.

Plaintiff David Cohn, now retired, sold large quantities of the bowling game of his invention while he was a toy manufacturer and his company was in business. Defendant Coleco Industries, Inc. is believed to have been highly successful in selling its essentially similar BOWL-A-MATIC games.

Defendant Coleco's Infringing
Toy Bowling Game

A discussion of the Defendant's toy bowling game would be repetitive of the discussion of the Plaintiff's invention presented above because the games are essentially the same.

Further analysis of the Defendant's BOWL-A-MATIC 300 game is presented in the affidavit of Mr. William R. Slinger which is submitted with this Memorandum. Mr. Slinger is a Mechanical Engineer, has worked in a variety of mechanical engineering positions, including positions as a Design Engineer. The game which

Mr. Slinger inspected is a BOWL-A-MATIC 300 game which had been slightly modified so as to demonstrate the fact that the Defendant's toy bowling game is a flagrant copy of the Plaintiff's invention which is the subject of the patent in suit.

Mr. Slinger's affidavit demonstrates that the Defendant's BOWL-A-MATIC 300 game has substantially the same structure, mode of operation, and result as the invention which is the subject of the Cohn patent in suit.

Mr. Slinger's Affidavit controverts the statements made in the Affidavit made on behalf of the Defendant's Motion for Summary Judgment by Dr. David Wetstone. Whatever competence Dr. Wetstone may have as a Chemist, no credentials are set forth in his Affidavit which qualify the gentleman to give credible, competent evidence as to mechanical devices such as those which form the subject matter of this action.

Mr. Richard Freeman, listed as inventor of the Coleco-Freeman U.S. Patent No. 3,866,691 and a Product Manager employed by Defendant Coleco has stated that the BOWL-A-MATIC game is reset with a reciprocating action, which also moves the spring bar in an up-down reciprocating action. (See Freeman Deposition excerpts attached as Exhibit C - page 43.) The string from the spring bar (also called "spring support brace") to the reset handle at the front of the game is not necessary, but is a marketing point for consumer convenience (Exhibit C - page 53). It is possible to dispense with the handle (80) and string (50)(Exhibit C - pages 54,55 and 58). This is demonstrated in Mr. Slinger's Affidavit. In the exchange from pages 59 to 64 of Exhibit C, Mr. Freeman agreed with the dictionary definition of "integral" as applied to the side panels 74 and 76 and playing surface 16 of the BOWL-A-MATIC games. In a rigorous exchange from pages 64 to 67 of Exhibit C the same dictionary's definition of "flange" was presented by Plaintiff's Counsel, Kenneth E. Macklin, to Defendant's Counsel, Peter L. Costas, but he objected to that appellation for the parts of the side panels (74) and

(76) which project above the playing surface (16).

Argument

The motion for Summary Judgment raises issues concerned with the doctrine of equivalents and the doctrine of file wrapper estoppel. The issues are issues of fact and a motion for summary judgment is not the proper vehicle for disposing of such issues.

The Defendant makes much of the Lloyd (U.S. Pat. No. 2,217,063) and Igou (U.S. Pat. No. 1,913,673) patents and the amendments which were offered by Plaintiff's Counsel in reply to multifaceted Official Actions from the Patent Office. Lloyd shows a vertically movable locator plate 28 into which the struck pins are retracted. To reset the pins on the alley, one has to unlatch the tops of the two side mounted spring steel stanchions 27 and manually slide the locator plate and pins down until the pins make contact with the alley. The spring steel stanchions exert lateral pressure. It appears that the game described and depicted is bigger than toy size. Igou shows free standing pins which must be manually picked up in single fashion and singly placed in the pin holder or template 17. This is spring counterweighed and the whole pin holder with all pins is moved to reset the pins. It too appears to be a game much larger than a toy.

The leading case on the doctrine of equivalents is, of course, Graver Tank & Manufacturing Co. v. Linde Air Products Co., 339 U.S. 605 (1950). As stated therein, the test of equivalency is whether the devices "... work in substatially the same function, in substantially the same way and accomplish substantially the same result". Id. at 608. While the patent at issue in Graver was found to be a "pioneer patent" the Court made clear that the doctrine did not per se turn on such a finding although narrower patents are generally afforded a lesser range of equivalents.

The equivalents doctrine is a question of fact and the

Cohn patent in suit is entitled to its range of equivalents. It is important to note that this is not a case where specific Coleco means were excluded from the claims. Rather, certain amendments were submitted to avoid having the claims read on means unlike Coleco's. There is certainly no estoppel with respect to the specific amendments in question and the patent in suit is entitled to some range of equivalents.

Coleco's game is more similar to Cohn's patent than to the prior art devices of Lloyd and Igou. As stated in Southern Textile Machinery Co. v. United Hosiery Mills Corp. 33 F. 2d 862,866 (6th Cir. 1929):

> This doctrine [of file wrapper estoppel] does not, however, go to the extent of depriving a patentee of protection against all equivalents and the doctrine may be subject to abuse when applied to the rejection upon reference of broad generic claims where narrower claims are allowed which would fully protect the patentee if permitted but a narrow range of equivalents. Under such circumstance, the patentee may reasonable be content with the claim allowed if he be afforded a fair construction and theprotection against obvious and exact equivalents; and the estoppel should go no further than to bar the patentee from reliance upon the cancelled claim in its broadest or generic construction.

See also, Tektronix, Inc. v. United States, 445 F. 2d 323,328 (Ct.Cl. 1971); Eastern Rotorcraft Corp. v. United States, 397 F. 2d 978,981-82 (Ct.Cl. 1968); Dole Valve Co. v. Perfection Bar Equipment, Inc., 298 F. Supp. 401, 406 (N.D. Ill. 1968), aff'd, 419 F. 2d 968 (7th Cir. 1969); Tensitron, Inc. v. Bromley, 260 F. Supp. 457,459 (E.D.N.Y.), aff'd, 369 F. 2d 699 (2nd Cir. 1966); Warner and Swasey Co. v. Held, 256 F. Supp. 303,309 (E.D. Wisc. 1966).

Defendant has alleged in its Motion that Plaintiff had "knowledge that his claim of infringement was frivolous." Yet the Defendant does not show any evidence to prove that alleged knowledge, let alone the alleged "frivolousness." Defendant merely recites an exchange of communications, a lapse of time when there was no communication and then the instituting of this suit. Certainly those bare facts do not support a claim of Plaintiff's "knowledge" of a "frivolous claim." Defendant's recollection of Mr. Cohn's deposition should be refreshed by the attached excerpted pages 27 to 42, which are attached as Exhibit F. Plaintiff indicates some difficulties with the first attorney he dealt with, but there is nothing to support Defendant's charge of a "frivolous claim."

Summary

Plaintiff has indicated in this memorandum together with its associated documents that a good number of material issues of fact are present in this action. In view of these outstanding issues of fact and the demonstrated essential similarity of the COLECO games to thos covered in the Plaintiff's patent rather than to the prior art patents cited, the Plaintiff respectfully submits that summary judgment of non-infringement should be denied.

Likewise, Plaintiff has indicated that Defendant has produced no facts to support his charge of this action being unjustified. Consequently, Plaintiff requests that Defendant's request for attorney's fees be denied.

Respectfully submitted
Plaintiff David Cohn

By Kenneth E. Macklin

Kenneth E. Macklin
Attorney for Plaintiff
180 South Broadway
White Plains, N.Y. 10605
(914) 949-6550

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition to Coleco's Motion for Summary Judgment of Non-Infringement of Cohn Letters Patent No. 3,019,020 was served this day upon the following counsel:

Kenneth Pearson, Esq.
Forsythe, Le Viness, Harnett, and Pearson
375 Park Avenue
New York, New York 10022

Dated: June 10, 1976

Kenneth E. Macklin

Kenneth E. Macklin
Attorney for Plaintiff
180 South Broadway
White Plains, New York 10605
(914) 946-6550

PLAINTIFF'S EXHIBIT C

EXTRACT FROM DEPOSITION OF RICHARD FREEMAN

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

- -x

DAVID COHN,

Plaintiff,

VS.

COLECO INDUSTRIES, INC.,

Defendant.

- -x

Civil Action

No. 75 Civ. 2077

Deposition of RICHARD FREEMAN, taken pursuant to the Federal Rules of Civil Procedure, at the law offices of Peter L. Costas, 3 Lewis Street, Hartford, Connecticut, before Roy F. Brown, a Notary Public in and for the State of Connecticut, on Monday, May 24, 1976, at 1:45 p.m.

EXHIBIT C

A. Yes.

Q. So am I correct in saying that one takes the handle from the play position, brings it to the reset position, and back, in one single reciprocating motion? Watch me again --

A. One doesn't have to do it in a reciprocating motion. One could take his time and stop the action if they wished to.

Q. But you ultimately have to reciprocate, right?

A. Yes.

Q. You start from play, you go over to reset, then you come back to the play?

A. Yes.

Q. Okay. Now, what happens when you place the handle in reset? Would you go and view the game from the operating back end? I'll put the handle in play position. Now, if I move it over to reset position, what happens?

A. The spring bar has moved upward.

Q. And if I put it in the play position, it's moved --

A. Downward.

Q. Okay. Exactly what is happening to the combination spring and string in each case for each of the ten pins: that is, the combination 116 and 114? Let's take a look at the string.

A. The string remains in position, but the spring bar has

wait for the resetting of mechanisms on the other end, and that's what you do here. You stay in that same position, that you are bowling, to reset your mechanism.

Q I wonder if I could ask you to take off the clear plastic on the back of Defendant's Exhibit H?

(Discussion off the record.)

(Recess taken.)

BY MR. MACKLIN:

Q So, just recapping, where we were, you indicated that there was some marketing input on the design of the game, as to customer convenience, or player's convenience?

A Yes.

Q And the desirability of having a handle out front for reset?

A Yes.

Q So that that would be the function, really, of bringing string 50 around pulley 54 and through the associated eyelets and so forth out to the front?

A Correct.

Q Okay. I wonder if you would take a look at the back of the game now that the clear plexiglas part has been removed? I wonder if you would grasp spring bar number 110? Would you pull

that down? Now, you've put these in playing position, is that -- manually?

A Pardon me?

Q You've put the pins in playing position manually by pulling this spring bar down, is that correct?

MR. COSTAS: And holding it down.

A You mean right now --

Q In other words, by hand --

A By hand, if I --

Q -- you have performed the function of string 50?

A Yes.

Q And you can pull that down, and if you were to hold it there, with the handle being in reset, so it's inactivated, I can bowl?

A You can, but I couldn't. I mean I couldn't bowl that way.

Q No. Okay. But if you had a hook or something there, that you could hook this onto, right, you could just say, put it here, if that eyelet were a hook at the bottom. you could take spring bar 110, and establish the proper tension through springs and strings: that is, 114 --

A No, not really.

Q You couldn't? It's impossible to duplicate by hand what --

A Well, the distance of travel from the reset position to the play position is the precise tension required by this particular string and these particular extension springs with these particular magnets --

Q So you are saying that --

A -- and you couldn't do that by this.

Q -- this is a particular position?

A Yes.

Q In other words, if I move the handle from reset to play, where the spring bar ends up, that is a particular position?

A Yes, correct.

Q That is calculated for the combination spring --

A Precisely calculated.

Q -- spring 114 and string 116?

A It's precisely calculated to the magnetic pull of the magnets.

Q Okay. So what you are saying is that if I nailed this spring bar 110 at the position it's in now, and cut the string --

A Cut what string?

Q Number 50 -- at the bottom, so it's free of string 50,

that what you said?

Q Yes, we're asking -- what I'm asking is -- we are trying to understand the functioning of your game.

A Yes.

Q We're trying to say what function does string 50 have, so we say, if you had a hook at this particular point where spring bar 110 is now, when the handle is in play position, would it be possible to manually move spring bar 110 down and hook it on that point, without having string 50 --

A Yes.

Q -- and handle A?

A Yes.

Q Okay. This angle here, where strings 116 go over bar 56, this again is another convenience point, is it not, to bring the handle A into play through string 50 going up to spring bar 110? In other words, could I have, instead, or would it be possible to have a functioning game, if instead of bending down over spring -- over bar 56, shown in Figure 5, if that bar were on top of the holes, would it be possible to take spring bar 110, bring it up and bring your handle out to the front, but overhead rather than underneath?

A I'm not sure. I would have to try it.

Q The angles are so critical that it's impossible to say that you could work the game in an overhead fashion, the same way that you operate it under the base through the handle, as it's presently set up?

A What you are asking me would be a design project that would have to be developed and proven out. I can't answer it unless I develop it.

Q All right. Let's move on to another area. I wonder if we can take a look now, Mr. Freeman, at Figure 1? Particularly taking a look at numbers 74 and 76. Do you see those, Mr. Freeman?

A Yes.

Q Those parts have slots on this interior sides, is that true, or channels down each side?

A Correct.

Q I don't know if those are actually shown here someplace.

A It's not indicated on Figure 1.

Q Not specifically.

A But it's on the --

MR. COSTAS: It's not shown on any of the views.

Q Okay. But we agree that there are channels on the interior sides, running lengthwise?

A Yes.

Q What would you say, that is about an inch down from the top, on each of pieces 74 and 76?

A Yes.

Q Now, if we look at Figure 1 again, 72 seems to be the number for the printed surface of the alley?

A Are you asking me a question, or --

Q Yes. Or do you take 72 to be the whole thing with the black parts indicated as gutters?

A What exactly does 72 say in the patent?

Q That's a good point.

MR. COSTAS: comprises -- it states at column 7, lines 13 dash -- looks like 18 -- that it is the flat surface which comprises the bowling lane of the bowling game, so it applies to the center portion. The overall portion is 16, which is shown on Figure 1, which is described as substantially level playing surface means.

MR. MACKLIN: So you could say 16 is all of this?

MR. COSTAS: The whole top surface.

MR. MACKLIN: The whole top surface is 16, okay, including the gutters, and this part, the printed lane

part?

MR. COSTAS: The bowling lane he's referring to, so that would be 72.

Q Now, that top part 16, including the gutter sections, is inserted in these channels in numbers 74 and 76, on Figure 1. Is that correct, Mr. Freeman?

A It's in 74. Whether it's 76, I don't know if that number is referring to the same part as 74, but it's in --

Q Well, have you located 76?

A Yes, but that may be the top piece, and this could be the side piece.

Q Well, let's check again, see what it says.

A If you want to be accurate.

Q Well, let's be as precise as we can.

MR. COSTAS: Side panels 74 and 76.

A That's correct.

Q Do you agree those are side panels?

A Yes.

Q Okay. 16, the gutter sections thereof, are inserted in the channels, in side panels 74 and 76?

A Correct.

Q You would say, then, they are integral with it?

(Record read.)

Q Okay, for the sake of argument, then, Mr. Freeman, we have here just one dictionary from Mr. Costas' library. I would like you to look at the title page. It's Webster's Seventh New Collegiate Dictionary by G. C. Merriam Company in Springfield, Massachusetts, and it's copyright 1967. Turning to page 439, the right column, part way down it says "integral", and I wonder if you would read those definitions?

A Why don't you read them?

Q All right. If you'd like. 1.a. says: "Essential to completeness." The next one has to do with mathematics. Okay. 2. says, "Composed of integral parts," says, "Integrated, lacking nothing essential, entire."

Is that a fairly accurate reading of the relevant parts, Mr. Freeman?

A You are not specific. You just made three statements of the word, as you read it, integral. Which one are you talking for me to say?

Q Well, where are we? 2: "Composed of integral parts," which is defining the word by itself.

A But then I'd like --

Q "Formed as a unit with another part." How about that as

a definition? As a premise?

A I like the first one.

Q "Essential to completeness"?

A Yes.

Q Are these side panels essential to the completeness of your game?

A Yes.

Q That, in accordance with the definition in this dictionary -- that would be said to be integral?

A Yes, as interpreted, essential to completeness, the word "integral" would be defined that way for this product.

Q Okay. Now, taking a look at the back part, which, I take it from Figure 1, the whole part is numbered 14, is that correct?

A Yes.

Q No, looks like 34 from Figure 6.

MR. COSTAS: The rear housing is 14.

MR. MACKLIN: Oh, that's part of it, I see. This piece here is what, 14?

MR. COSTAS: The whole rear section is 14. The whole rear housing is 14.

Q Okay. Taking a look at number 14, then, this part is

fastened to side 74 and 76, is that correct?

A Correct.

Q Now, the parts of 74 and 76 which extend above -- what did we say before for this whole -- 16, this whole part here? Would you refer to those as flanges?

A No.

Q What would you call them, just the parts that extend up? They would not form flanges?

A I don't see any part extending up. The whole thing, if you look at it, is one piece. There is no extension.

Q Well, relative to 16, would they be flanges?

MR. COSTAS: How can it be relevant to something else, when, in fact, he's just referred to the fact that it's a whole piece that goes above and below this element which goes transversely? A flange is a part of another element.

Q Let's refer again to the same dictionary, Merriam, Webster's Seventh New Collegiate Dictionary. Take a look at page 317, Mr. Freeman, where it has the definition of "flange". It says -- the first one is: "A rib or rim for strength, for guiding, or for attachment to another object."

MR. COSTAS: Yes.

Q Would you say that 74 and 76 were for attachment to another object?

MR. COSTAS: Obviously not. You know, Mr. Macklin, you know, I'm going to object. What are you trying to do? 74 and 76 are an integral piece. You already went through the fact that 74 and 76 have a channel in which to receive the other piece. You are trying to take a little part of it above this channel, and now you are going to call that a flange? Now, really, you are getting a little bit too far, by your own definition, Mr. Macklin. Make up your mind what you want.

MR. MACKLIN: It's not my definition.

MR. COSTAS: Well, tell me what the flange is, that portion which you are referring to, that portion which is above the part you have integrated.

MR. MACKLIN: You cannot take another part and put it onto something and create a flange thereby, is that your position?

MR. COSTAS: My position is that you have got an integral structure, which is the side wall panel. It does not have a flange on it, nor is it meant for integration to the extent that you are trying to talk

about a piece above something else.

MR. COHN: Can we have a little conference?

MR. MACKLIN: Excuse me.

MR. COSTAS: Sure.

(Discussion off the record.)

MR. MACKLIN: Okay. I take it we've got as far as we can on that, Mr. Costas?

MR. COSTAS: Well, you know, you are trying to take the words of your patent and apply them to a totally dissimilar structure, and you want this witness to mouth your words, and I just don't think you can. And you can't do your structure two different ways for purposes of trying to come within a dictionary definition. You already tried to use it one way to get the base plate integral. Now you want to take a part above the point that made it integral and call it a flange.

MR. MACKLIN: Great things are done in engineering.

MR. COSTAS: I don't think so, not in any engineering department that I'm aware of. I'd love to see you argue those terms, by the way, in that construction in the Patent Office.

Q Okay. Going back to the back housing, I take it, number

PLAINTIFF'S EXHIBIT D

PATENT NO. 2,217,063 (Lloyd)

Same as Defendant's Exhibit D - See page 130

PLAINTIFF'S EXHIBIT E

PATENT NO. 1,913,673 (Igou)

Same as Defendant's Exhibit E - See page 137

PLAINTIFF'S EXHIBIT F

EXTRACT FROM THE DEPOSITION OF DAVID COHN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

DAVID COHN,

Plaintiff,

-against-

75 Civ. 2077
(Judge Knapp)

COLECO INDUSTRIES, INC.,

Defendant.

----------x

DEPOSITION of DAVID COHN, taken before Morene B. Korenman, a Notary Public of the State of New York, held at the offices of Kenyon & Kenyon Reilly Carr & Chapin, Esqs., 59 Maiden Lane, New York, New York, on the 11th day of November 1975, at 1:30 p.m., pursuant to agreement.

BORAK REPORTING SERVICE, P.C.
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NEW YORK, N.Y. 10017

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questioning the witness in terms of infringement since that is a legal conclusion.

MR. COSTAS: Mr. Heller, will you stipulate that the Coleco Bowl-A-Matic 300 game is the game which is charged to be an infringement of the Cohn patent in suit?

MR. HELLER: Yes.

BY MR. COSTAS:

Q Mr. Cohn, was this game obtained by you?

A Yes.

Q From where?

A I don't remember.

Q Do you recall when you obtained it?

A This particular one? I bought several games in several different stores. I don't know if we are referring to this particular game (indicating).

Q I am referring to the game which is here in your attorneys' offices.

A I don't know where I bought it.

Q Do you know when you bought it?

A In the last three months.

Q At the time you filed this suit you apparently had a sample of the Coleco game; is that correct?

EXHIBIT F

A Yes.

Q Where did you buy that game?

A At Alexander's.

Q When did you buy that game?

A I don't remember, but a sales slip is in the possession of the attorneys.

MR. COSTAS: Mr. Heller, do we have the sales slip?

MR. MACKLIN: I think we have a copy, but the date is illegible. Let me see if I can find it.

Here is a Xerox of a Xerox, but that is about the best we can do at this time (handing).

MR. COSTAS: May we ask production of the original to see if it is more legible?

THE WITNESS: This is with Mr.March. Oh,he asked him the question, I am sorry.

MR. MACKLIN: If we can obtain it, surely.

BY MR. COSTAS:

Q There is some handwriting upon this, as reproduced by this photocopy, which says, "Sample picked up in Alexander's."

Is that your handwriting?

A Yes.

Q And "Coleco Bowl-A-Matic 306," is that your handwriting?

A No.

Q Whose handwriting is that?

A The woman in charge of the floor. I got her to sign this slip for me.

Q Is that the O. Buchholtz?

A Yes, an employee of Alexander's.

Q Do you recall what year this was obtained?

A It was '73.

Q We are talking about the one now from Alexander's.

A Yes, I know. This was in December, I believe -- wait a minute. The last quarter of '73.

MR. COSTAS: I would ask that the photocopy of the slip from Alexander's be marked Defendant's Exhibit C.

(Photocopy of slip from Alexander's marked Defendant's Exhibit C for identification, as of this date.)

(Short recess.)

BY MR. COSTAS:

Q The game that you purchased at Alexander's

was the one that you took to Mr. March, then, I gather, for purposes of discussion?

A Yes.

Q That was sometime in the latter part of 1973; is that correct?

A Yes.

Q Did you assemble that game which you had purchased?

A No.

Q You never assembled the game?

A No.

Q Did you discuss with Mr. March whether the game did or did not come within the scope of your patent?

A Yes.

Q Did you authorize Mr. March to write a letter to Coleco accusing them of infringement?

A Yes.

Q You never assembled the game?

A No.

Q I show you a copy of a letter on the stationery of Arthur March dated November 15, 1973 --

MR. MACKLIN: Before we go a little bit further, I would like to take exception.

You say did he authorize Mr. March to write a letter to Coleco asking them of infringement, which I don't think the letter says.

MR. COSTAS: I didn't say the letter said it. He answered "Yes" to the question.

MR. MACKLIN: Would you read that question back so the deponent can listen to it?

(Question read.)

A That was the wrong answer.

Q What was the right answer?

A I didn't tell Mr. March to accuse anybody. Since he was a lawyer, I told Mr. March my problem and he took care of it.

Q What problem did you tell him?

A I told him that I felt that --

MR. HELLER: One moment. I object on the basis of attorney-client privilege.

MR. COSTAS: We have a foundation. The witness has just said he told him his problem. We are not asking for the opinion. We are asking him what the problem was.

MR. HELLER: I need to discuss this with the witness for a moment.

(The witness and counsel conferred off the record.)

MR. HELLER: The objection remains.

MR. MACKLIN: Are you instructing the witness not to answer?

MR.HELLER: Yes. However, I have no objection to your eliciting the facts as to what Mr. Cohn considered to be his problem.

The substance of the attorney-client communications, I believe, are privileged.

BY MR. COSTAS:

Q Mr. Cohn, would you explain --

MR. HELLER: I believe you can get the facts you want.

MR. COSTAS: Thank you.

Q (continuing) Mr. Cohn, would you explain to us what you considered to be your problem?

A I knew a patent existed, that I had a patent on a bowling game.

I saw in Alexander's a picture of a game on a box and I saw the similarity between that and my patent. This was my problem, so I went to my patent attorney and I told him about it.

I bought a game and brought it to him.

Q Number 92, what figure are you looking at?

A Figure 7.

Q Okay.

THE WITNESS: Was it 78, that piece there? I can't quite make it out, which would be the ball return?

MR. COSTAS: Off the record.

(Discussion off the record.)

A In Figure 7, 140 was masonite hardboard as opposed to what is patented as a plastic, one-piece construction.

Q All right. Were those the only essential differences, then, between your first working prototype and Defendant's Exhibit H?

A To my best recollection.

Q Okay. So you had pins 102, and you stated they had magnets in their bases?

A Yes.

Q Were there magnets anyplace else, or magnetic material anyplace else in the game?

A Yes.

Q Where would they be, and would you specify what sort of magnetic material?

A They were placed -- I believe the number in Figure 7,

134.

Q Would you specify what 134 were in your first working prototype, or was?

A Were ceramic magnets, solid, magnetized through the thickness. But I would like to clarify that the magnet in the base of the bowling pin was a doughnut-shaped magnet with a hole in the center of it.

Q Was there any significance to that?

A Yes, there was.

Q Would you explain?

A The significance being the pin design was to accommodate the structure of the magnet so that in manufacturing the magnets would be placed in a permanent retaining position for the customer to have when he received his game, and also --

Q So that was for customer convenience?

A No, not entirely. And also it was to facilitate our manufacturing procedures.

Q Were there any other differences that you can think of in a functioning way between your first working prototype and Defendants' Exhibit H?

A Not that I can recall.

Q Well, let me ask you this: Was part -- I guess it's 36,

the drawing and the illustration.

Q At no time have you assembled the Coleco game?

A No.

Q Do you know --

MR. HELLER: One moment.

(The witness and counsel conferred off the record.)

MR. HELLER: May we have the last two questions and answers, please?

(Record read.)

A Exception. In the last couple of weeks I assembled one for my attorneys.

(Discussion off the record.)

MR. HELLER: The parties have stipulated that testimony with regard to any matter which may have been subject to an attorney-client privilege will not constitute a waiver of that privilege with regard to the entire transaction, and objections on the basis of privilege may be retained with regard to the entire transaction with the exception of that which has been entered into the record.

MR. COSTAS: I would ask that the letter

of Arthur March which the witness has identified be marked Defendant's Exhibit D. It is dated November 15, 1973.

(Letter of Arthur March dated November 15, 1973 marked Defendant's Exhibit D for identification, as of this date.)

BY MR. COSTAS:

Q I show you the letter, Defendant's Exhibit D. Do you recall having seen that previously?

A I received a copy of this, a carbon of the letter that March wrote.

Q The carbon being received from Mr. March?

A Yes.

Q I have here a copy of a letter from Michael Schwefel to Arthur March dated November 26, 1973. Do you recall having seen that previously?

A No.

MR. COSTAS: For the record, I will stipulate that this is a copy of a letter regularly sent by general counsel for Coleco Industries, Inc. to Arthur March, and I will represent that it is a true copy.

May we stipulate that this is an exhibit, although the witness has not seen it himself?

MR. HELLER: On your representation, we have no objection to it being marked as an exhibit.

MR. COSTAS: I would ask that the letter of Mr. Schwefel dated November 26, 1973 be marked Defendant's Exhibit E.

(Letter of Mr. Schwefel dated November 26, 1973 marked Defendant's Exhibit E for identification, as of this date.)

BY MR. COSTAS:

Q Mr. Cohn, I have here a copy of a letter from the files of my office signed by Arthur E. Fournier addressed to Arthur March with the date of December 12, 1973, and I ask if you recall ever having seen that document previously?

A I never saw this.

MR. COSTAS: Again, counsel, I would represent that this is a true copy of the document sent to Mr. March on or about December 12, 1973 and it comes from the files of my offices.

MR. HELLER: On that representation, we have no objection to its being marked for identification.

MR. COSTAS: Please mark this letter of December 12, 1973 Defendant's Exhibit F.

(Copy of letter to Arthur March from Arthur E. Fournier dated December 12, 1973 marked Defendant's Exhibit F for identification, as of this date.)

BY MR. COSTAS:

Q Mr. Cohn, following your contact with Mr. March in late 1973 in which you told him your problem, what happened?

A I don't understand what you mean, "what happened?"

Q What do you recall? What essentially do you recall happening?

A March said he was taking care of it.

Q What was taken care of? What finally transpired?

A My retention of these attorneys.

Q With respect to Mr. March?

A Yes.

Q You went to see him sometime in late 1973. He sent you --

A No, no. I couldn't see Mr. March. He was too busy traveling, taking care of cases, so I didn't see

Mr. March.

Q You saw someone in Mr. March's office?

A No.

Q What did you do?

A Just sat and waited as a client for March to get in touch with me, which he never did.

Q He did send you a carbon copy of a letter, you said, which was --

A After many, many, many points of argument, and I finally got the letter out of him.

Q By that you are referring to Defendant's Exhibit D?

A That's right.

Q Did you have any further contact with Mr. March following his sending out the letter which is Defendant's Exhibit D?

A No.

Q You never heard from him again?

A Only casual conversations on the phone.

Q Did he indicate to you that he had received a communication from Coleco?

A No.

Q When did you have these casual conversations with Mr. March?

A From time to time after receipt of this particular letter.

Q Over what period?

A I asked him to -- what?

Q Over what period?

A I don't remember time.

Q This letter is dated November 15, 1973, the one of which you received a copy, Defendant's Exhibit D.

A Within easily the next eighteen months. From November 1973, for eighteen months I couldn't -- I tried to get Mr. March to institute a suit, to file papers on a suit, which I am talking now as an individual who knows nothing about law. I am not a lawyer.

I went to my attorney and asked him to process the case for suit in the Federal District Court. He said he was doing it. I don't know what he did.

Q In other words, you asked him to bring suit against Coleco?

A Oh, yes.

Q Did he ever discuss with you the fact that he heard from Coleco?

A No.

Q Did he ever discuss with you that he evaluated whether the Coleco game was within the

patent?

A He said "Yes " to me.

MR. HELLER: One moment.

(The witness and counsel conferred off the record.)

MR. COSTAS: Would you repeat the last question and answer?

(Record read.)

BY MR. COSTAS:

Q He said "Yes" to you what?

MR. HELLER: I object. You are getting into an area of attorney-client privilege, and I will object on that basis.

MR. COSTAS: Are you instructing him not to answer?

MR. HELLER: Yes.

Q At some point in time you apparently decided to seek other representation; is that correct?

A Yes.

Q When did you decide to change?

A Several months ago.

Q The present suit was instituted on May 7, 1975, and it was filed by John A. Reilly.

Does that refresh your recollection as

corresponds to number 80 on Figure 7, which is marked "In Play" position on the front housing, lifting up and returning to reset location.

Q. Which is to the left?

A. Which is to the left.

Q. Now, to actually get ready for play, what do you have to do? You have moved it up out of the slot to the left to reset. Now, to get ready for play, what do you do? Does one play the game --

A. You return A, which is 80, on Figure 7, to play position, in front housing.

Q. Well, would you actually do that and describe exactly which way it's moving?

A. I am placing my right hand on A, which is number 80, and sliding number 80 to the right and placing it down into play position.

Q. Okay. So that actually what happens, when we get a strike, I've just removed all the pins from the playing surface, I've broken the magnetic attraction to the base, is that correct? We're assuming that was a strike?

A. Yes.

Q. Okay. And all the pins are off the board, right?

PLAINTIFF'S RULE 9(g) STATEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff v. COLECO INDUSTRIES, INC. Defendant	)	CIVIL ACTION No. 75 Civ. 2077 Judge Knapp

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE EXISTS A GENUINE ISSUE TO BE TRIED

In accordance with Rule 9(g) of the General Rules for the Southern District, Plaintiff David Cohn submits the following statement of material facts as to which he contends there is a genuine issue to be tried:

(1) The scope of Plaintiff's patent in suit.

(2) Whether that scope encompasses the Defendant's games.

(3) Whether the Defendant's BOWL-A-MATIC bowling games literally infringe the Plaintiff's patent in suit.

(4) Whether or not there is equivalence, between Defendant's BOWL-A-MATIC bowling games or parts thereof and the invention of the Cohn patent in suit or parts thereof respectively.

(5) Whether file wrapper estoppel is applicable.

(6) Why the claims of the Plaintiff's patent were amended and to what effect.

(7) The purpose of adding structural elements to claim 17 to form claim 18 of the Cohn application.

David Cohn,
Plaintiff

By Kenneth E. Macklin
Kenneth E. Macklin
Attorney for Plaintiff
180 South Broadway
White Plains, N.Y. 10605
(914) 949-6550

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Statement of Material Facts as to which there exists a Genuine Issue to be Tried was served this day, upon the following counsel:

Kenneth Pearson, Esq.
Forsythe, Le Viness, Harnett, and Pearson
375 Park Avenue
New York, New York 10022

Dated: June 10, 1976

Kenneth E. Macklin

Kenneth E. Macklin
Attorney for Plaintiff
180 South Broadway
White Plains, New York 10605
(914) 946-6550

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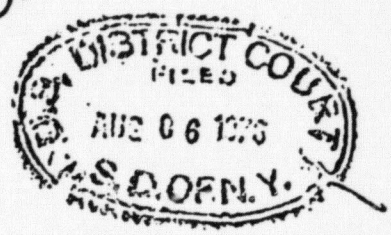
MEMORANDUM AND ORDER
GRANTING SUMMARY JUDGMENT



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID COHN,

Plaintiff,

- against -

COLECO INDUSTRIES, INC.,

Defendant.

MEMORANDUM AND ORDER

75 Civ. 2077

4/4939

KNAPP, D.J.

Defendant has brought this motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure seeking a judgment that its toy bowling game does not infringe upon United States Letters Patent No. 3,019,020 which had been granted to plaintiff in 1962. Defendant contends that because of the operation of the doctrine of file wrapper estoppel its game does not fall within the scope of protection of plaintiff's patent. We agree.

The patent in question was granted to plaintiff on four claims only after having been narrowed by several amendments. As a result, the plaintiff's coverage is restricted, and he cannot use the doctrine of functional equivalents to extend the scope of his protection. Pittway Co[illegible] v. Trine Mfg. Corp. (S.D.N.Y. 1974) 183 U.S.P.Q. 67[illegible]. Since there is no dispute as to the fact that the accused game does not contain certain of the structural

limitations described in the amended patent in Claims 1 and 4, we must find that the patent has not been infringed.

Paintiff contends that the doctrine of file wrapper estoppel does not act to bar all equivalents and that there is a question of fact as to how much equivalent protection he can claim. We are unpersuaded by the autorities cited in support of this contention, preferring to rely on Pittway and the authorities there cited (at 677). The structural limitations in question were those specifically added in order for plaintiff to gain allowance of his patent; while there might be some equivalent protection he could seek for other elements of his claim, he has none for these particular amendments.

Accordingly, defendant is entitled to summary judgment. Defendant has asked for attorney's fees on the ground that plaintiff's case is utterly frivolous. Although we have found that defendant is clearly entitled to summary judgment, we do not find this case to be so exceptionally unfounded as to necessitate an award of attorney's fees, and we deny defendant's request.

Submit judgment on five (5) days' notice.

SO ORDERED.

Dated: New York, New York
August 5, 1976.

WHITMAN KNAPP, U.S.D.J.

SUMMARY JUDGMENT DISMISSING ACTION ON THE MERITS, DENYING DEFENDANT'S REQUEST FOR ATTORNEY'S FEES AND GRANTING RECOVERY OF DEFENDANT'S COSTS

U.S. DISTRICT COURT FILED OCT 12 1976 S.D. OF N.Y.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DAVID COHN, Plaintiff	CIVIL ACTION
v.	NO. 75 CIV 2077
COLECO INDUSTRIES, INC. Defendant	Judge Knapp

JUDGMENT

This cause of action came on to be heard on Defendant's Motion for Summary Judgment on the ground of noninfringement of United States Letters Patent No. 3,019,020, and the Court having granted the said Motion in its Memorandum and Order filed August 6, 1976, it is hereby

ORDERED, ADJUDGED AND DECREED that the action be dismissed on the merits, that Defendant's request for attorney's fees be denied, and that Defendant recover its costs.

Dated: New York, N.Y.
October 7, 1976

U.S.D.J.

JUDGMENT ENTERED — 10/12/76
Raymond F. Burghardt
CLERK

MICROFILM OCT 12 1976

Service of 1 copies of this within
Appendix is admitted this 17TH
day of February 1977

ATTORNEY FOR Defendant Appellee

FOR SYTHE LEVINESS
+ GIBSON

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